

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

THE SEYCHELLES

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Seychelles 2013

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

November 2013
(reflecting the legal and regulatory framework
as at August 2013)

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once adopted by the Global Forum.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to www.oecd.org/tax/transparency and www.eoi-tax.org.

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in the Seychelles together with the practical implementation of that framework. The international standard which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain timely access to that information, and whether that information can be effectively exchanged with its exchange of information (EOI) partners. The assessment of effectiveness in practice has been performed in relation to a three year period (1 July 2009 to 30 June 2012).

2. A small jurisdiction – covering 451 km² with 87 000 inhabitants – situated in the Indian Ocean some 1 500 kilometres East of mainland Africa, the Seychelles is one of the most developed African countries, with a GDP per capita close to USD 10 000.

3. While the Seychelles’ economy is mainly driven by tourism and fishing exports (together these sectors represent 83% of GDP), the Seychelles is also one of the most active offshore centres in the world, offering a wide range of products such as international business companies, limited partnerships, international trusts and, since 2009, foundations. The Seychelles currently has more than 120 000 registered international business companies, 50% more than in 2009 and 4 times their number in 2005. In addition, the Seychelles is active in strengthening its offshore industry, developing new legislation to allow for the establishment of international corporate vehicles.

4. The main feature of this offshore sector is the tax free or low tax environment offered by the Seychelles, the flexibility of the products (with the possibility to transfer into the Seychelles a legal entity set up abroad), and the possibility, in some cases, to benefit from a low tax environment and the Seychelles’ growing treaty network.

5. The Seychelles committed to the international standards of transparency and effective exchange of information in 2002 and has entered into EOI relationships with 40 jurisdictions mainly situated in Africa, Asia and the Arab peninsula. Since 2010, the Seychelles has also signed 9 TIEAs with

European jurisdictions. All these agreements meet the international standard. Recently, the Seychelles has signed 7 DTCs and one multilateral agreement with African countries. Out of all Seychelles' agreements three of the recent DTCs contain restrictions that do not conform to the international standard and it is recommended that the Seychelles works with its partners to bring these treaties into line with this standard.

6. Ownership information in relation to domestic entities is available in the Seychelles and monitored by the Registrar of Companies and the Seychelles Revenue Commission. The combination of the Seychelles' legal framework existing at the time of the Phase 1 review and amendments adopted in 2011 requires ownership information in relation to international business companies, limited partnerships, international trusts, and foundations to be available in the Seychelles. A lack of monitoring of legal obligations in relation to offshore business and deficiencies in the enforcement measures provided by law do not, however, provide sufficient assurance that information will be available in all instances and it is recommended that the Seychelles introduces more effective enforcement measures. Domestic companies are prohibited from issuing bearer shares and while international business companies are still allowed to issue this type of shares, all particulars relating to their holders must be recorded in a share register maintained at the registered office in the Seychelles. In practice, however, transfer of bearer shares certificates may not always be reported to registered agent. This information may therefore not be available within the Seychelles in all instances.

7. By virtue of amendments adopted in 2011, international business companies, limited partnerships, international trusts and foundations are required to keep reliable accounting records, with underlying documents, for at least five years in compliance with the standard. For the moment, the Seychelles has not put in place any supervision or monitoring programme to ensure that these records will be available in accordance with the law in all instances. This is particularly the case for IBCs. In addition, it appears that in practice there are no effective sanctions in situations where accounting data is not kept. Hence it is not possible to ascertain that in practice reliable accounting records will be kept by financial entities. It is therefore recommended that the Seychelles ensures that accounting records are available for EOI purposes and that effective sanctions are in place.

8. Accounting records pertaining to domestic companies and partnerships are available in the Seychelles and this availability is duly monitored by the Seychelles Revenue Commission. Financial institutions are subject to obligations ensuring that transaction and customer information is available in compliance with the international standard. In terms of practical experience, one request dealing with bank information was received by the Seychelles during the review period and the requested information was provided. For

anti-money laundering purposes, the Seychelles' authorities have also been in a position in many instances to exchange bank information on request.

9. The powers of the Seychelles Revenue Commission to access ownership and accounting information are very broad. The amendments adopted in December 2011 make it clear that these powers can also be used to answer incoming requests received from treaty partners and the Seychelles' authorities are empowered to use these powers notwithstanding any secrecy provisions contained in other Acts. Consequently, information pertaining to international business companies, limited partnerships, international trusts and foundations can be obtained for EOI purposes even though the four Acts regulating these entities contain confidentiality rules. Taxpayers' rights and safeguards do not unduly restrict or prevent the provision of information by the Seychelles to its international partners. The Seychelles Revenue Commission already has a lot of experience in requesting and obtaining information for domestic tax purposes. Its domestic access to information powers have been successfully tested on many occasions. The Financial Intelligence Unit (FIU) has also, during the period under review, exchanged ownership information with its counterparts for anti-money laundering purposes. As far as EOI for tax purposes is concerned, however, the Seychelles' experience is new and very limited as only one incoming request has been received so far. The Seychelles' authorities should therefore continue to monitor their practices to ensure that incoming requests are handled in a proper manner to ensure effective EOI in all instances.

10. The Seychelles has been assigned a rating¹ for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of the Seychelles' legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, the Seychelles has been assigned the following ratings: Compliant for elements A.3, B.1, B.2, C.3 and C.4, Largely Compliant for element C.5, Partially Compliant for elements C.1 and C.2, and Non-Compliant for elements A.1 and A.2. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for the Seychelles is Non-Compliant.

11. A follow up report on the steps undertaken by the Seychelles to answer the recommendations made in this report should be provided to the PRG within twelve months after the adoption of this report.

1. This report reflects the legal and regulatory framework as at the date indicated on page 1 of this publication. Any material changes to the circumstances affecting the ratings may be included in Annex 1 to this report.

Introduction

Information and methodology used for the peer review of the Seychelles

12. The peer review process of the Seychelles has been undertaken across three reports; the 2011 Phase 1 report, a Supplementary Phase 1 report, and a Phase 2 Report. The assessment of the legal and regulatory framework of the Seychelles as well as its practical implementation and effectiveness were based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*, and were prepared using the Global Forum's *Methodology for Peer reviews and Non-Member Reviews*.

13. The Phase 1 report of the Seychelles was based on the laws, regulations, and exchange-of-information mechanisms in force or effect as at July 2010, other materials supplied by the Seychelles, and information supplied by partner jurisdictions.

14. The supplementary peer review report, which followed the original Phase 1 report of the Seychelles, was prepared pursuant to paragraph 58 of the Global Forum's Methodology and was adopted by the Global Forum in June 2012. The supplementary report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at April 2012, and information supplied by the Seychelles.

15. The Phase 2 assessment is based on the laws, regulations, and exchange of information mechanisms in force as at 23 August 2013, the Seychelles' responses to the Phase 2 questionnaire, supplementary questions and other materials supplied, information provided by exchange of information partners, and explanations provided by the Seychelles during the on-site visit that took place from 15-17 May 2013 in Victoria, the Seychelles. During the on-site visit, the assessment team met with officials and representatives of the Seychelles Revenue Commission, the Seychelles International Business Authority, the registrar of Companies, the Financial Intelligence Unit, the

Central Bank of the Seychelles, the Attorney General’s office and representatives of service providers (see Annex 4).

16. The following analysis reflects the integrated 2011 Phase 1, supplementary Phase 1 and Phase 2 assessments of the legal and regulatory framework of the Seychelles in effect as at May 2013, and the practical implementation and effectiveness of this framework in the three-year review period of 1 July 2009 to 30 June 2012.

17. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses the Seychelles’ legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding the Seychelles’ legal and regulatory framework that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning the Seychelles’ practical application of each of the essential elements and a rating of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant is assigned to each element. An overall rating is also assigned to reflect the Seychelles’ overall level of compliance with the standards.

18. The Phase 1 assessment was conducted by a team which comprised two expert assessors and one representative of the Global Forum Secretariat: Mr Jose Ivan Cavalcanti Ramos, Tax Auditor in the Brazilian Federal Revenue Service for Brazil; Mr Philippe Cahanin, Director in the Large Businesses Audit Branch of the French Revenue Administration for France; and Mr Rémi Verneau from the Global Forum Secretariat. The supplementary assessment was conducted by a team which comprised two expert assessors and one representative of the Global Forum Secretariat: Ms. Ivonete Souza, Tax Auditor in the Brazilian Federal Revenue Service for Brazil; Mr Philippe Cahanin, Director in the Large Businesses Audit Branch of the French Revenue Administration for France; and Mr Rémi Verneau from the Global Forum Secretariat. The assessment team assessed the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in the Seychelles.

19. The Phase 2 assessment was conducted by an assessment team which comprised two expert assessors: Ms. Ivonete Souza, Tax Auditor in the Brazilian Federal Revenue Service for Brazil; Mr Philippe Cahanin, Director in the Large Businesses Audit Branch of the French Revenue Administration

for France; and two representatives of the Global Forum Secretariat, Mr Rémi Verneau and Mr Radovan Zidek. The assessment team assessed the practical implementation and effectiveness of the legal and regulatory framework for transparency and exchange of information and relevant EOI arrangements in the Seychelles.

20. The ratings assigned in this report were adopted by the Global Forum in November 2013 as part of a comparative exercise designed to ensure the consistency of the results. An expert team of assessors was selected to propose ratings for a representative subset of 50 jurisdictions. Consequently, the assessment teams that carried out the Phase 1 and Phase 2 reviews were not involved in the assignment of ratings. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach.

Overview of the Seychelles

21. The Seychelles (officially the Republic of the Seychelles) is an archipelago of 115 islands in the Indian Ocean some 1 500 kilometres east of mainland Africa, northeast of the island of Madagascar. Other nearby island countries and territories include Mauritius and Reunion to the south, and Comoros and Mayotte to the southwest. The Seychelles, with an estimated population of 90 000 inhabitants on 451 km², has the smallest population of any African state. Creole, English and French are the three official languages of the Seychelles.

General information on legal system and the taxation system

Legal system

22. A former British Colony, the Seychelles has been an independent State since 1976. The basic law of the Seychelles is the *Constitution of the Republic of the Seychelles* which took effect on 21 June 1993. This law declared the Sovereign Democratic Republic of the Seychelles as a Unitary State.

23. The Seychelles President, who is both head of state and of government, is elected by popular vote for a five-year term. The unicameral Seychellois Parliament, the National Assembly (or *Assemblée Nationale*), consists of 34 members, of whom 25 are elected directly by popular vote, while the remaining nine seats are appointed proportionally according to the percentage of votes received by each party. All members serve five-year terms.

24. The legal system looks partly to the civil law and partly to the common law tradition. The Law of Persons, the Law of Contract and the Law of Torts look to the civil law tradition (in particular, the Napoleonic Code) and the laws of commerce and banking are mainly based on statutes which originated in the common law system. Public law areas are governed by statutes based on common law principles. The legal Codes come first in the Seychelles hierarchy of laws, followed by the Acts and Regulations, all three being instruments issued by the Parliament. Other official instruments under various names, including manuals and guidelines, may also be issued by government authorities, and are binding and enforceable.

25. The judicial system consists of magistrates' courts, the Supreme Court, and a Court of Appeal. The Court of Appeal hears appeals from the Supreme Court in both civil and criminal cases (including civil and criminal cases related to taxation matters). The Supreme Court has jurisdiction of first instance and acts as court of appeal in respect of cases from the magistrates' courts.

Customs and tax systems

26. The Seychelles' tax system is based on direct taxes such as the income tax on individuals and the business tax, as well as consumption taxes Value Added Tax, VAT). Direct taxes include business tax and personal income tax, accounting for 28.4 % of total tax revenues and 8.6 % of GDP during the past five years. Indirect taxes include the VAT which has accounted for 34.2 % of the total revenue collection and 10.1% of GDP for the past five years, while import duties include trades tax with 21.6 % of the total revenue collection and 6.6 % of GDP for the past five years.²

27. Offshore entities such as companies incorporated under the International Business Companies Act benefit from a tax free environment. Companies incorporated under the Companies Ordinance, 1972 and licensed under the Companies (Special Licences) Act, 2003 are subject to a 1.5% corporate tax on their worldwide income. Income tax is payable by the employee and by the employer. Employees pay at a rate of 15%. The tax on non-monetary income of the employee is payable by the employer and the rate is 20%. The employer must remit the withheld tax monthly to the Seychelles Revenue Commission. The VAT rate is 15%. Trade tax at a rate of 25% is levied upon entry of the goods in Seychelles. Excise tax applies to specified imported goods at different rates.

28. Administrative responsibility for revenue law is under the management of the Revenue Commissioner at the Seychelles Revenue Commission (SRC), an independent body responsible to the Minister of Finance which was

2. Information provided by the Seychelles' authorities. Information also available on the African Economic Outlook Website.

established under the Seychelles Revenue Commission Act, 2009. The SRC is involved in the design of tax policies, assessing, collecting and accounting revenue. While the competent authority for the exchange of information in the Seychelles is the Minister of Finance, Trade and Investment, requests for exchange of information are administratively dealt with by the Seychelles Revenue Commission.

29. Acting under the control of the Ministry of Finance, Trade and Investment, the Seychelles International Business Authority (SIBA) is an independent body established under the Seychelles International Business Authority Act, 1994 to manage and operate international business activities within the Seychelles. SIBA aims primarily to promote and develop the Seychelles offshore sector. But SIBA acts also as the regulatory and supervisory authority of the offshore sector as well as being the registration authority for the implementation of the International Business Companies Act, 1994, the International Trust Act, 1994, the International Corporate Service Providers Act, 2003 and the Foundations Act, 2009. Changes in the legal framework that applies to the SIBA are expected to be enacted by the end of 2013 (see recent developments below).

Overview of the Seychelles economy, financial sector and relevant professions

30. In 2009, the Seychelles GDP was SCR 10 276 million (USD 822 million) with a GDP per capita of SCR 122 865 (USD 10 000). The Seychelles economy is driven by tourism and fishing exports.

31. The services sector, which includes transport, communications, commerce and tourism accounted for about 55 % of GDP in 2008 (20 % of which was in the tourism sector, which employs 25% of the Seychelles' labour force). Fishing accounts for 0.9 % of GDP with an important contribution by the tuna canning factory. Given the shortage of arable land, agriculture, forestry, and fishing (excluding tuna canning) make a small contribution to national output, accounting for 2.6 %.

Offshore sector

32. The growing offshore industry has over the years played an increasingly important role in the development of the Seychelles economy. The Seychelles renewed its commitment to developing its financial services sector through the passage of the revised Mutual Fund Act 2007, Securities Act 2007 and Insurance Act 2007. According to a government press release published on 31 October 2008, it is the Seychelles' intention to pursue its continuing efforts to grow the Seychelles as an offshore financial centre of substance and integrity.

33. Between 2005 and 2012 the number of international business companies incorporated in the Seychelles increased from 25 000 in 2005 to 85 000 in 2010 and more than 108 000 in 2012, the number of special license companies from 31 to 234 and the number of trusts from 135 to 487. In 2012, the Seychelles was the second jurisdiction in the world, after the British Virgin Islands, for the number of international business companies incorporated.

34. SIBA grants authorisations to qualified intermediaries³ (international corporate service providers, international trustee service providers and foundation service providers) which become then the interlocutors of SIBA for all offshore businesses. The Code of Practice⁴ provides obligations and duties licensees have to comply with. Further, SIBA may issue binding guidelines and give directions for proper conduct of business by a licensee.⁵ Annual audits are conducting by SIBA to ensure observance of these rules.

35. Tied to this offshore industry, 10 foundations service providers, 27 trusts service providers and 73 corporate service providers are licensed by SIBA. In addition, 22 attorneys, 22 accountants, 20 notaries, 31 auditors are covered by the customer due diligence requirements stated by the anti-money laundering legislation. The table below provides some statistics on the number of offshore entities formed in the Seychelles and the number of service providers:

Cumulative number of financial entities in the Seychelles (number per year)

	2005	2006	2007	2008	2009	2010	2011	2012
International business companies (IBCs)	24 924	33 161	43 456	47 205	69 609	75 787	92 272	108 374
Trusts	135	163	211	312	367	405	444	487
Special licences companies (“CSL companies”)	31	77	114	153	192	206	223	234
Limited partnerships	5	6	7	14	17	19		
Protected cell companies	1	1	1	1	2	4	5	5
Foundations	-	-	-	-	-	3	65	159

3. Which can only be companies incorporated under the Companies Ordinance, 1972.
4. Established under schedule 3 of the International Corporate Service Providers Act, 2003.
5. SIBA has published Guidance Notes for Corporate Service Providers. The directions and guidelines are binding on licensees and should a licensee act in contravention to any direction or guidelines or the Code of Practice, it commits an offence (Art 16 of the International Corporate Service Providers Act, 2003).

Financial sector

36. Banking and financial matters, including insurance, are controlled by the Financial Institutions Act, 2004 and Insurance Act, 2008 under the supervision of the Central Bank of the Seychelles (governed by the Central Bank of the Seychelles Act, 2004). The anti-money laundering legislation is under the control of the financial intelligence unit. The domestic financial services sector in the Seychelles is relatively small with, in 2013, seven commercial banks, four insurance companies, twelve insurance brokers, three money transmitters and one credit union. Since 2007, the Seychelles has developed a new securities market. In 2013 finance and business services represented 5.6 % of the GDP. The total value of assets held by Seychelles' banks amounted to EUR 1.12 billion as of 1 July 2013. The total value of deposits held by these banks was over EUR 0.97 billion in July 2013.

37. The securities industry and the mutual fund and hedge fund industry are controlled by individual Acts which are also administered by SIBA. These industries are relatively new and more active licensing of these activities is expected to occur in the near future

Anti-money laundering legislation

38. The Seychelles AML/CFT framework is governed by the AML Act of 2006. Under this Act, the FIU is empowered to request any information from reporting entities for the purpose of fulfilling its statutory remit. Subsequent amendments were made in August 2008 which introduced wide ranging reforms to the 2006 Act. This amending legislation gave the FIU additional functions, including powers to investigate suspicious transaction reports and other forms of criminal conduct. In addition, the AML legislative framework was enhanced by the enactment of the Proceeds of Crime (Civil Confiscation) Act 2008 which provided for a regime of civil confiscation.

39. Further amendments were made in 2011, under which the FIU was empowered to require any person appearing to have information, documentation and materials required in connection with its statutory remit, to furnish such information to the FIU. In April 2012, following the publication of the revised FATF Recommendations, new customer due diligence obligations of reporting entities were published in Regulations reflecting the new requirements of the FATF. These provisions were reviewed during the supplementary Phase 1 review that was conducted in 2012 and are described below in section A.1 of this report.

Recent developments

40. A new Companies Bill is being drafted with the help of the World Bank. Its purpose is to repeal and replace the Companies Ordinance 1972. The SIBA would become a Financial Service Commission whose functions would be licensing of financial entities and service providers and supervision of the financial centre. The Attorney General's office stated that these new provisions will not have any impact on the current rules that deal with the availability of ownership and accounting information.

41. New anti-money laundering rules are also being implemented in the Seychelles. According to the Attorney General's office, the new Act would consolidate all existing pieces of legislation and its new provisions would not impact on the current principles relating to customer due diligence.

Compliance with the Standards

A. Availability of Information

Overview

42. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as accounting information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of the Seychelles' legal and regulatory framework concerning then availability of information.

43. There are in the Seychelles two separate sectors, governed by two different sets of rules:

- “domestic entities” such as companies incorporated under the Companies Ordinance, 1972 or partnerships set up under the Civil Code of the Seychelles, 1976; and
- “offshore entities” comprising international business companies, protected cell companies, special license companies, limited partnerships, international trusts and foundations.

44. Ownership and accounting information is available with respect to the two categories of domestic entities. The availability of this information

is closely monitored by the Seychelles' authorities, either by the Registrar of Companies or by the Seychelles Revenue Commission. The Seychelles does not have any experience in exchanging information on domestic entities but for domestic purposes, information is always available when needed.

45. As a result of amendments to the law in 2011, the Seychelles ensures that ownership information in relation to companies, IBCs, limited partnerships, trusts, and foundations is available. There are also mechanisms to ensure the availability of ownership information on bearer shares issued by domestic and international business companies. The Seychelles has also improved its AML framework which provides new rules in relation to customer due diligence (CDD). Supporting AML Regulations were gazetted on 17 April 2012 and ensure information in relation to nominee ownership to be available. However, there are currently no effective enforcement provisions to ensure that up-to-date ownership information in relation to IBCs will be available in all instances. Moreover, transfer of bearer shares certificates may not be reported to registered agent in all instances.

46. In 2011, the Seychelles amended all acts dealing with IBCs, limited partnerships, international trusts and foundations to introduce record keeping requirements in line with the international standard. These entities are now required to keep accounting records with the underlying documentation for at least five years. The Seychelles' authorities have not put in place a supervision or monitoring programme to ensure that these records will be available in accordance with the law in all instances. This is particularly the case for IBCs. In addition, there are no effective sanctions in situations where accounting data is not kept. It is therefore recommended that the Seychelles ensures that accounting records are available in the Seychelles and that effective sanctions are in place.

47. Finally, there are in the Seychelles, under the Financial Institutions Act, requirements to make bank information available. These requirements seem to be consistent with the international standards of transparency and exchange of information in that all transaction records are required to be maintained by financial institutions and be available to government authorities. In practice, the Seychelles have received one request for bank information and have been able to provide an answer to the partner jurisdiction. The Financial Intelligence Unit (FIU) has also reported that it has been able to collect bank information in all instances for anti-money laundering purposes. For the period under review, the SRC has also obtained such information for domestic purposes in 172 instances and for EOI purposes in one case.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

Companies (ToR 6 A.1.1)

48. Based on the English company law, the Companies Ordinance, 1972 is the main statute providing obligations for companies, proprietary and other companies. The International Business Companies Act, 1994, Companies (Special Licences) Act, 2003 and Protected Cell Companies Act, 2003 provides for the registration of offshore businesses under a separate authority.

49. The main types of companies that can be incorporated in the Seychelles are:

- Companies incorporated under the Companies Ordinance, 1972 where the liability of a member of the company is limited to the nominal value of the shares registered in his name. 5 500 companies incorporated under this Ordinance are currently in the records of the Registrar;
- Proprietary companies incorporated under the Companies Ordinance, 1972 which are companies without preference shares, comprising not more than 50 members where at least three quarters of the issued shares are held by the directors and where neither members nor directors are corporations and where the proprietary company has no holding company. For the period under review, 271 proprietary companies registered with the Registrar of Companies;
- Companies registered under the Companies Ordinance, 1972 and Protected Cell Companies Act, 2003 create one or more cells for the purpose of segregating and protecting cellular assets according to the Act (for example, different classes of insurance), without the need to set up different legal entities. 5 protected cell companies are currently registered with the Registrar;
- Companies incorporated under the International Business Companies Act, 1994 which are designed to conduct business outside of the Seychelles and are not allowed to carry on business within the country or own any substantial property there. These companies are tax-exempt in the Seychelles. Dividends may be distributed without any withholding tax. 108 000 IBC were registered in the Seychelles as at

6. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.*

the end of 2012, 50% more than in 2009 and 4 times their number in 2005;

- Companies incorporated under the Companies Ordinance, 1972 and licensed under the Companies (Special Licences) Act, 2003 carrying on offshore banking, offshore insurance, reinsurance, investments, holding, marketing, holding intellectual property, acting as a head-quarters company, human resource company, franchise company, or conducting business under an International Trade Zone license. This special status provides confidentiality, a corporate tax at a 1.5% and lower withholding tax rates on dividends and interest. There were 234 CSL companies in the Seychelles at the end of 2012.

Domestic companies incorporated under the Companies Ordinance 1972

50. Registration of companies covered by the Companies Ordinance, i.e. domestic companies, protected cell companies, special licensed companies and foreign companies carrying out business activity in the Seychelles, is the responsibility of the Registrar of Companies. The registrar is also in charge of maintaining the business name register and the land and property register. Currently, 24 persons work for the Registrar. 10 new officers are expected to be hired soon, along with an increase of the Registrar's budget from SRC 3 to 6 million⁷ (EUR 193 050 to 386 100). Of the 24 current staff members, 5 are dedicated to registration of companies.

51. When a company wishes to be incorporated, it first has to check the availability of its proposed name. This can be done directly on-line or at the Registrar's office. A specific database dedicated to this has been developed by the Registrar. The name cannot be reserved (and consequently no fee has to be paid at that stage) but, if available, can be used to prepare all incorporation documents.

52. For a company registered under the Companies Ordinance, 1972, the memorandum and articles of association must be delivered to and registered by the Registrar of Companies. Pursuant to section 4 paragraph 4 of the Ordinance, the memorandum and articles must state the number of shares the company may issue, the nominal value of those shares, and whether each of those shares has the same nominal value or if different nominal values are attributed to shares of different classes. However, there is no requirement to disclose ownership information in these documents. The Registrar of Companies then certifies that the company is incorporated and certifies

7. EUR 1 = SCR 15.54 cf. www.xe.com/fr/ accessed on 6 June 2013.

the date of the incorporation (sections 10(1) and 11(1) of the Companies Ordinance, 1972).

53. For incorporation, the officer in charge will check whether all documents required to be provided by law have been filed and the incorporation fee paid. The only practical issues that sometimes arise are that the company's activities may be vague or there are discrepancies in the figures for shares provided in the different documents. The Officer will call the company representative for them to amend their documents prior to registration of the documents. As a legal practitioner is usually used to draft incorporation documents, this ensures the adequacy of information provided. When all documents have been properly filed, incorporation can be done within three days. When registered, the company receives a business identification number which will be also used for tax purposes. All registration information available to the Registrar is thereafter automatically shared on a daily basis with the Seychelles Revenue Commission (SRC). The registrar reported that 348 limited domestic companies were incorporated in 2011 and 371 in 2012.

54. The following information is maintained by the Registrar of Companies:

- name of company and company number;
- date of registration and certificate of registration;
- memorandum of association and, if provided, articles of association;
- declaration of compliance with the Companies Ordinance, 1972;
- annual return and audited accounts;
- particulars of directors and secretary and registered office; and
- registered charges.

55. The Registrar maintains all documents in paper files but all of them are also scanned. It is expected that in the future this information will be kept in electronic format only. All documents are kept as long as a company is in existence. Once the company is struck-off from the register, these documents are archived and kept for a period of 12 years, which is the period during which a company may be reinstated. During this timeframe, the documents are no longer public but can nevertheless be provided on request to other government authorities when needed.

56. There is no ownership information maintained by the registrar and accordingly, no obligation to update this information. However, pursuant to section 114 of the Companies Ordinance, 1972, all companies incorporated under this Ordinance are required to file an annual return to the Registrar of

Companies that includes, pursuant to the fifth Schedule of this Ordinance, a list containing the names and addresses of all the members of the company.

57. The Seychelles' authorities have reported that most domestic companies spontaneously comply with their obligation to file annual returns. The average level of compliance is between 80-90%. This obligation is closely monitored by the Registrar as a fee must be paid along with the submission of the annual return. When a company fails to provide this return, a notice is issued by the Registrar. This occurred in about 250 cases during the period under review. In the event that no answer is received in response to a notice, the company is included in a list of non-compliant companies, which is published in the Official Gazette. The registrar reported that occurred in 46 instances over the period under review. If within three months of publication in the Official Gazette returns are still not lodged, companies are struck off from the register. In practice more than 90% of companies receiving a notice finally file their returns. 75% of companies whose name is published in the Official Gazette also lodge their annual returns. During the period under review, 58 domestic companies were struck off as well as 64 CSL companies. The hiring of new staff and in particular a new compliance officer will in the future enable the Registrar to allocate more resources to monitoring the compliance of companies with their annual filing obligations.

58. The accuracy of the information provided in each annual return is checked against information already available to the Registrar. For instance, if a new registered office is mentioned in the return but has not already been reported to the Registrar, the company will be asked to update this information in the register. As transfers of shares are subject to stamp duty and therefore filed with the Registrar's Office (s.84A of the Companies Ordinance 1972), the Registrar has knowledge on an on-going basis of any changes in companies' shareholders and this is checked against information provided in annual returns. When discrepancies are noted, the return is sent back to the party concerned until it is corrected. This is the case in about 5% of returns. If the corrected return is not provided in the time indicated by the Registrar sanctions apply including strike off of the company from the Register (see section A.1.6).

59. In addition, every company is required to keep a register of its members including their names and addresses, a statement of their shareholdings, the date at which they became or ceased to be members. This register must be kept at the registered office of the company and a notice of its location must be sent to the Registrar of Companies (sections 102(1), 102(2) and 102(3) of the Companies Ordinance, 1972). Nevertheless this requirement does not apply to publicly traded companies as these companies are not required under that ordinance to keep such a register. The keeping of share registers is not subject to supervision. However, through the obligation to lodge any transfer

of shares document with the Registrar and the cross-checking of this information with that provided in the annual returns, the Registrar also makes sure that updated information in relation to domestic companies is kept by the companies concerned, otherwise it would not be possible to submit accurate annual returns.

60. Considering the information included in the annual return submitted to the Registrar of Companies, the share register which requires to be kept at the registered office of the company, as well as the practical operation of these arrangements, ownership information regarding companies incorporated under the Companies Ordinance, 1972 is available in the Seychelles. So far the Seychelles' authorities have not received any EOI requests for information on domestic company ownership but for domestic purposes, when such information is needed for domestic purposes, it is readily available.

Protected cell companies (PCC)

61. Pursuant to section 3 (3) of the Protected Cell Companies Act, 2003, the provisions of the Companies Ordinance, 1972 apply to PCCs unless the context requires otherwise. To register, a PCC must first send its proposed articles of incorporation to the Seychelles International Business Authority (SIBA) which will check whether all obligations provided by the Protected Cell Companies Act are met. Once the SIBA is satisfied, the articles can be provided to the Registrar of Companies. The registration process is the same as for domestic companies. One PCC was registered in 2011, none in 2012.

62. There is in the Protected Cell Companies Act, 2003 no specific provision stating that such a company desiring to be registered in the Seychelles would be required to disclose information on its shareholders. It means that neither pursuant to the Companies Ordinance, 1972 nor the Protected Cell Companies Act, 2003, is it required that ownership information be disclosed to a registration authority.

63. However, annual returns must be filed with the Registrar of Companies in accordance with the Companies Ordinance, 1972. These annual returns must be in the form prescribed in the fifth schedule of the Companies Ordinance, 1972 and include, according to these provisions, information detailing the identity of shareholders. Management and monitoring of these returns is conducted by the Registrar in the way described above for domestic companies incorporated under the Companies Ordinance, 1972. According to the Seychelles authorities there has been no instance of non-compliance by a PCC with these obligations.

Special license companies (“CSL companies”)

64. For companies registered under the Companies Ordinance, 1972 and licensed under the Companies (Special Licenses) Act, 2003 (the CSL Act), information to be provided to the Registrar of Companies is the same as mentioned above in paragraphs 46 to 48. It means that there is no need to disclose ownership information to the Registrar of Companies. However in addition to this registration requirement, a CSL company must apply for a special licence from the SIBA and must provide among other things:

- the names and addresses of shareholders and where such shareholder is a nominee, the name and address of the person on whose behalf the shares are held by the nominee; and
- the memorandum and articles of association duly signed and dated.

65. As a result the SIBA has records of shareholders’ identities.

66. For the registrar, the process of incorporation under the CSL Act is the same as that for domestic companies except that all documents are first checked and approved by the SIBA which ensures that all documents required for incorporation are present. The company can then be incorporated, in line with the procedure described above for domestic companies. Once the CSL company has been incorporated, the SIBA can grant a license the company. This license is a prerequisite for the company to get the specific tax regime provided by the Seychelles’ law for these companies (taxation of the CSL company on its worldwide income at a 1.5% rate). 17 CSL companies were registered and licensed in 2011, 14 in 2012.

67. Annual returns must be submitted by CSL companies and filed with the SIBA, and not with the Registrar of Companies. The annual returns must contain, pursuant to the fifth schedule to the Companies Ordinance, 1972 a document mentioning the identity of the CSL company’s shareholders. The SIBA monitors these filing obligations to make sure that accurate and up-to-date data are filed on time by these entities, along with the payment of the expected fee. A CSL is required to submit its annual return within 90 days following its financial year end. Before the deadline expires, the SIBA sends out reminders to all CSLs informing them of their obligation to file the annual return. A CSL may request an extension of the filing deadline before it expires of up to 90 days. The extension is in the vast majority of cases granted. If a CSL fails to file the return within the deadline (or within the extended deadline) sanctions will apply. The sanction has not yet been applied since all CSLs file their annual returns within the required deadlines.

International business companies (IBCs)

68. For registration of a company under the International Business Companies (IBC) Act, 1994, the memorandum and articles of associations must be delivered and registered by the Registrar of International Business Companies (maintained by SIBA). If not provided initially as part of registration, the articles must be submitted within 30 days following the date of incorporation. The Registrar of International Business Companies then certifies that the IBC is incorporated and the date of the incorporation (section 14).

69. Applications to register IBCs are directly filed by licensed corporate service providers (“CSPs”). Typically, the first step is to reserve a name. This can be done with the SIBA by e-mail or by fax. It is also possible to use an automated on-line system to check the availability of a name. To be accepted, a name should not already be in use and should not contain any words that would not be allowed under the law.

70. Once the name has been reserved, the IBC can be incorporated. This can be done within two or three hours after all necessary documents have been submitted. The possibility of quickly incorporating an IBC in the Seychelles is also widely advertised by CSPs on their websites. The use by CSPs of a standardised memorandum of association whose completeness is then easier to check. Careful consideration is given to the activities of the IBC which should not be illegal (some activities are prohibited by law) as well as to the location of the registered office. More than 16 000 IBCs were registered by the SIBA for each of the years 2011 and 2012. Amongst the 72 staff working for the SIBA, 11 are fully dedicated to these functions.

71. Ownership information is not provided to the SIBA on registration nor does the SIBA undertake any due diligence measures. CSPs should have already undertaken these checks before approaching the SIBA to incorporate an IBC. As part of its supervision functions, the SIBA inspects CSPs to assess the extent to which they comply with their legal obligations, in this regard. Supervision also takes place through the licensing of service providers as the SIBA assesses whether CSPs are “fit and proper” (see below “Information held by service providers/anti money laundering legislation”).

72. The IBC register contains the following information:

- the name and registration number of the company;
- the date of its incorporation;
- its authorised share capital and/or guarantee amount;
- the name and address of its registered agent and the address of its registered office;

- the date and description of any hypothecation, mortgage or charge registered;
- the date of last payment of annual fees; and
- the status of the company.

73. All IBCs must annually renew their registration. If this is not done on time, a 10% surcharge on the fee will be applied. After four months, the surcharge increases to 50%. After six months the IBC can be struck off and the announcement is published in the Official Gazette. The SIBA mentioned that in practice, striking off takes place on 1 January of each year. 6 275 IBCs were struck-off from the register in 2010 for failure to pay the annual fee, 7 372 in 2011 and 8 248 in 2012. 79 IBCs were struck off for other reasons in 2010, 243 in 2011 and 483 in 2012. The reason for being struck-off was usually failure to have a registered agent or that the IBC was conducting business or other activities which were, or were likely to be, contrary to the written laws of Seychelles or detrimental to the reputation of Seychelles.

74. Under the Seychelles' legislation, there is no requirement to include details of ownership in the memorandum or the articles of association. Ownership information is not required to be disclosed to the Registrar of IBCs, and there is in addition no need to provide this information to the Seychelles Revenue Commission as IBCs are not liable to tax and are therefore not required to file tax returns.

75. All IBCs incorporated under the International Business Companies Act, 1994 are required to keep a share register containing the names and addresses of the persons who hold registered and bearer shares in the company, the number of each class and series of shares held by each person, the date the person became and ceased to be a member. A company which contravenes this provision is liable to a penalty of USD 25 for each day or part thereof during which the contravention continues (section 28). A copy of this register must be kept at the IBC's registered office in the Seychelles which, since 2011 must be the same address as that of its registered agent, or at another place in the Seychelles as the directors determine in which case they must notify the registered agent where the register is kept. SIBA has not come across a situation whereby the share register is kept outside the registered agent's premises and no deficiencies in maintaining the share register were found during SIBA's inspections. Consequently, sanctions for not keeping the share register have not yet been applied.

Registration of foreign companies

76. A foreign company that establishes a place of business or carries on business in the Seychelles must register with the Registrar of Companies (section 310(1) of the Companies Ordinance, 1972) under the same conditions as apply for domestic companies (see previously).

77. It follows, that these companies must file an annual return with the Registrar of Companies disclosing the identity of the companies' shareholders and, if they are not publicly traded companies, must keep a register of shareholders. The practices of the Registrar in relation to foreign companies carrying out business in the Seychelles are the same as those for domestic companies, ensuring that ownership information on these companies is available in the Seychelles. Foreign companies carrying on business in the Seychelles are also taxable entities subject to filing obligations with the SRC.

Information held by the Seychelles Revenue Commission

78. Under s.71 of the Revenue Administration (Business Registration) Regulations 2010 that came into force on 1 January 2010, all businesses operating in the Seychelles must be registered with the Seychelles Revenue Commission (SRC) (Regulation 2). This includes domestic and foreign companies carrying out activities in the Seychelles, CSL companies and general partnerships (see below section A.1.3). It does not include IBCs which cannot carry on business in the Seychelles. Registration should be completed within 14 days after the business commences its activity. The following particulars must be provided (Regulation 4):

- name of the business;
- dates on which the business commenced;
- name and address of the owner of the business and, where the owner is a partnership, the name and address of each partner;
- nature of the business activities;
- an estimate of the net income the business is expected to derive in the first year of its operation.

79. As all businesses in the Seychelles must either register with the Registrar or the Seychelles Licensing Authority or with both, this gives broad assurance that all businesses will also be registered for tax purposes in a timely manner. Being registered with the Registrar or the Seychelles Licensing Authority does not relieve a business from registering with the SRC. During the period under review an average of 1 200 businesses per

year registered for tax purposes. 12 staff within the SRC are dedicated to the registration of businesses.

80. At the time of registration, the SRC conducts a full check of the information provided by the business. In some instances, registration cannot be completed on the basis of the information provided but the situation has improved since the SRC is now able to download on a daily basis data maintained by the Registrar (this has been the case since April 2012) and on a monthly bases information from the Seychelles Licensing Authority. When the SRC is not satisfied with information provided upon registration, an on-site inspection can be carried out.

81. If as a result of information received from other authorities, the SRC discovers that a company has not registered for tax purposes, it will first send a reminder. If no answer is received, a visit to the business premises will be organised. Such missions are undertaken by two persons dedicated to routine inspections. If the on-site visit does not produce the expected outcomes, a letter of intention to prosecute may be sent out. The SRC reported that in 2011, 8 such on-site inspections were carried out, resulting in 8 registrations. 57 were performed in 2012 followed by 57 registrations.

82. No ownership information is furnished at the time of incorporation. By law, all businesses registered for tax purposes must lodge an annual tax return along with full and certified financial statements with the SRC. The SRC reported that usually (i.e. in about 75%), identity of owners and shareholders of business is reported by auditors in the financial statements, although this is not a legal obligation. This information is stored in the paper file of the business, along with a range of other information. 15 staff are dedicated to the management of taxpayer files, including management and monitoring of filing obligations. Filing obligations for CSL companies are the same as those provided for domestic companies except that CSL companies are taxed on their worldwide income at a lower rate.

Information held by service providers/anti money laundering legislation

Corporate service providers

83. All international business companies incorporated in the Seychelles are required to have a registered agent there, licensed under the International Corporate Services Providers Act, 2003 to conduct these types of services. It is not possible to provide these services unless licensed by the SIBA. Currently, 73 CSPs are licensed. The registered office of an IBC must be at the same address as the registered agent. Hence, CSPs are the most important link in the chain to ensure the availability of ownership information in

the Seychelles as the share registers of IBCs, or a written record of where they are kept, must be kept at the principal place of business of the CSP. The share register, amongst other things, contains the names and addresses of all individuals to whom client companies have issued bearer shares. Pursuant to AML rules and the ICSP Act, CSPs are required to know the beneficial owners of their customers

84. When a company asks to be licensed as a CSP⁸ in the Seychelles, the SIBA will first check whether the company involved is fit and proper. To this end, the Supervision Department of the SIBA will consider:

- whether the applicant is a company incorporated under the Companies Ordinance (only the Seychelles' companies can act as service provider);
- the competence, probity, experience and soundness of judgement of the staff;
- the financial soundness of the CSP (the company cannot be bankrupt and must maintain a good financial record system). A minimum capital is also required;
- the education and professional qualifications of its staff (degree from a recognised university or qualifications from specialised body such as STEP or ICA);
- the compliance manual, operations manual and procedures manual, to determine whether the applicant has sufficient control mechanism in place in order to comply with all relevant legislation (especially the AML/CFT legislation). Any change made to these manuals must be reported to the SIBA in a timely manner.

85. The applicant is also interviewed to assess their knowledge of the business, appreciation of responsibilities and their understanding of the rules governing CSPs. Should some elements be missing or the level of knowledge not high enough the CSP would not be licensed.

86. Once a CSP has been licensed, it is subject to an on-going monitoring and supervisory process. Supervision of CSPs is performed by 13 staff (their numbers have doubled since 2010, reflecting the increasing number of IBCs registered in the Seychelles). Supervision includes off-site desk based audits based on examination of information that CSPs are required to provide to the SIBA. Information required to be provided includes an annual return, annual audited accounts, details of capital structure, a compliance document, and the names of newly appointed directors. All applicable legal principles must be encapsulated in the compliance manuals that CSPs must also provide to

8. These requirements are exactly the same for a trust or a foundation service provider.

the SIBA on an annual basis. The SIBA also cross-checks that information provided by CSPs is the same as that maintained at their offices.

87. Besides off-site audits, the SIBA has a programme of on-site inspections. This was put in place in 2006. First, all CSPs are inspected within one year of licensing to assess whether all requirements provided by law are duly fulfilled. A total of 82 on-site inspections, including such compliance review visits, have been conducted over the period 2009-12. Thereafter, on-site inspections are conducted, using a risk-based approach which takes account of complaints received or information analysed during desk audits. However, such on-site inspections are infrequent and there is no programme under which any CSP having a business in the Seychelles will be inspected on a regular basis. During audits, seven specific areas are scrutinised including compliance with CDD requirements and internal controls. Identification documents kept by CSPs are checked at that time, including information on beneficial owners which they are required to hold pursuant to the AML Act and copies of registers of members of companies to which they provide services.

88. From the SIBA's perspective, the results of these audits show that compliance with CDD requirements is generally good and information is mostly available. Some deficiencies nevertheless exist as the AML/CFT framework is evolving and CSPs need time to adapt.

89. After the on-site inspection has taken place, a report is drafted by the SIBA and a timeframe is given to the CSP concerned to comply with the law, in the event that any deficiencies were discovered. Dialogue is preferred to sanctions as this is considered to give better results. Follow-up inspections can be organised to check whether the recommendations have correctly been implemented. In the most severe cases, the license can be suspended or revoked. The SIBA reported that suspension of a license is a deterrent as the CSP could not exercise its functions for 30 days following suspension. In the event of a license being revoked, the CSP concerned could not apply for a new license as he would no longer be considered as "fit and proper". For the period under review, 3 licenses were revoked by the SIBA of which two were in 2012. In one case the SIBA's decision was appealed before the court. This case is still pending.

90. Since the entry into force of the latest amendments made to the IBC Act, the SIBA has advised all CSPs of the changes, through meetings and seminars. Targeted on-site inspections have taken place to check compliance of CSPs with these new requirements.

Anti money laundering legislation

91. In the Seychelles, the fight against money laundering is primarily driven by the AML Act, 2006 as further amended in 2008 and most recently in 2011. Under this Act (s. 2 and schedule 2 to the Act), the following professionals are, amongst others, considered as reporting entities and must adopt preventive measures to fight money laundering:

- financial institutions licensed under the Financial Institutions Act;
- a trust or a service provider which as business provides any of the following services:
 - acting as a formation agent of legal persons;
 - acting as (or arranging for other person to act as) a director or secretary of a company, a partner of a partnership or a similar position in relation to other legal persons;
 - providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - acting as (or arranging for another person to act as) a trustee of an express trust;
 - acting as (or arranging for another person to act as) a nominee shareholder of another person;
- persons providing by way of business legal or notarial services when they prepare for or carry out transactions for their clients concerning the following activities: (i) buying or selling of real estate; (ii) management of client money, securities or other assets; (iii) management of bank, savings, or securities accounts; (iv) organisation of contributions for the creation, operation or management of companies; and
- accountants when providing by way of business the following services: external accountancy service, tax advices, audit services or insolvency services.

92. Pursuant to the AML Act, section 4, a reporting entity shall apply CDD measures in respect of customers, business relationships and transactions, and conduct on-going monitoring of business relationship as prescribed in regulations.

93. New Regulations, gazetted on 17 April 2012, aim at providing the rules relating to CDD and a definition of beneficial ownership.

94. Regulation 3 defines “Customer Due Diligence Measures” as meaning, among other things: (i) identifying the customer and verifying the

customer's identity on the basis of documents, data or information obtained from a reliable and independent source or from any other sources that the reporting entity has reasonable grounds to believe can be relied upon to identify and verify the identity of the customer; (ii) where the customer is not the beneficial owner, identifying the beneficial owner and taking reasonable measures, on a risk-sensitive basis, to verify the identity of the beneficial owner, including, in the case of a legal entity, partnership or trust measures to understand the ownership and control structure of that legal entity, partnership or trust.

95. Pursuant to Regulation 4, beneficial ownership is to be understood as:

- in the case of a legal entity, any individual who: (i) exercises control over the management of the legal entity; (ii) in respect of a legal entity other than a legal entity whose securities are listed on a recognised exchange, owns or controls directly more than 25% of the shares or voting rights in the body corporate or legal entity;
- in a case of a partnership, any individual who: (i) ultimately is entitled to or controls, directly or indirectly, more than 25% of the share capital or profits of the partnership or more than 25% of the voting rights in the partnership; (ii) otherwise exercises control over the management of the partnership; and
- in the case of a trust: (i) any individual who is entitled to a specified interest in at least 25% of the capital of the trust property; (ii) the class of persons in whose main interest the trust is set up or operates; (iii) any individual who has control over the trust.

96. Regulation 8 provides that CDD must be performed by reporting entities at the time these entities: (i) establish a business relationship; (ii) carry out a one-off transaction;⁹ (iii) have doubts on the veracity or adequacy of documents, data or information obtained for the purpose of identification or verification of a customer; or (iv) there are reasonable suspicious of criminal conduct, money laundering or financing of terrorism.

97. Reporting entities must keep all records in relation to CDD for seven years from the date of: (i) receipt of identity of a customer; (ii) any transaction or correspondence; or (on which the business relationship ceases, whichever shall be the latest (Regulation 8(5)).

98. Considering this, the Seychelles' laws ensure information is maintained in relation to legal ownership. When service providers act as nominees,

9. Defined under Regulation 5 as to be a transaction in excess of SCR 100 000 (EUR 5 577) or of SCR 50 000 (EUR 2 789) in case of cash transaction. 1 EUR = 17.93 SCR as at 22 February 2012. See www.xe.com/ucc/fr.

they must identify the person for whom they act (regardless of the percentage of shares this person holds in a legal entity) and, if their customer is a legal person, must identify those persons who hold at least a 25% interest in that legal person.

99. Compliance of CSPs with AML/CFT requirements is checked by the Financial Intelligence Unit (FIU). After its creation in 2006¹⁰ the FIU began a round of on-site inspections of all entities and persons subject to the Seychelles' AML/CFT rules. A total of 15 staff work for the FIU of which 4 are dedicated to onsite inspections. In 2010, 26 on-site inspections took place, in 2011, 16 and 9 in 2012. As part of this cycle, each of the seven banks established in the Seychelles is inspected every 2 or 3 years. All CSPs were inspected between 2008 and 2010, 6 in 2010, 1 in 2011 and 2 in 2012. Since 2010, the FIU has concentrated its efforts on other professionals subject to AML/CFT obligations such as bureaux de change (20 were inspected in 2010), real estate agents (9 were inspected in 2011) or insurance brokers (6 were inspected in 2012). The FIU expects to start a new cycle of on-site inspections soon and to inspect records maintained by CSPs from 2015.

100. During an on-site inspection, the FIU checks, amongst other things: the CSP's policy and procedure for the conduct of CDD; how identification of clients is dealt with; the keeping of identification and transaction records for 7 years; policy in relation to politically exposed persons; training of staff; and dissemination of suspicious transaction reports. To this end, the FIU audits a sample of files kept by the CSP concerned to see whether all documents required by law to be maintained are present. The result of the on-site inspections performed show that most of identification document are maintained in the files, including information on beneficial owners. The FIU has reported that what is sometimes missing is the procedure manual which gathers together all of the principles that are provided by law. Some shortcomings in relation to staff training have also been noted.

101. After an on-site inspection has been conducted, a report containing recommendations is drafted by the FIU and provided to the CSP concerned. The CSP then has four weeks to provide comments. As the compliance level of CSPs with their legal obligations is high, none of them has ever been sanctioned for breach of AML/CFT principles. The FIU mentioned that should this happen, the most appropriate sanction would be to ask the SIBA to revoke the license that was granted. Should the FIU want to apply a sanction directly, it could immediately freeze the account of the CSP concerned for 90 days. Otherwise, the case would be transmitted to the Attorney General's office which would decide whether the CSP concerned should be prosecuted.

10. Before 2006, its functions were directly performed by the Central Bank of the Seychelles.

102. In 2010, information was requested from CSPs by the FIU in 58 instances, 89 in 2011 and 114 in 2012. Information was respectively provided in 56, 87 and 114 of these cases.

103. The FIU has also developed a programme of training courses and as part of this, annual courses were provided to staff of CSPs, bureaux de change and insurance companies in 2010 and 2011 and one to members of the Compliance Officers Association in 2012. These training courses covered, the following topics: customer due diligence and CDD measures, customer identification procedures, record retention requirements, record retention requirements, or on-going training of staff.

Nominees

104. Nominee ownership is regulated in the Seychelles by the International Corporate Service Providers Act, 2003 which defines international corporate services among other things as “serving as a nominee shareholder in a specify entity” (section 2 of the Act).

105. Pursuant to section 8 of the same Act, any service provider is obliged to maintain such documents relating to its business or client as may be required by or under this Act or any other law of the Seychelles. In particular, as regards nominee shareholdings, an international corporate service provider is required, pursuant to the anti-money laundering legislation to ascertain the identity of its customers. When service providers act as nominees, they must identify the person for whom they act (regardless of the percentage of shares this person holds in a legal entity) and, if their customer is a legal person, must identify those persons who hold at least a 25% interest in that legal person.

106. In the case of a natural person, these entities are required to gather information relating to the person’s name, address and occupation, the national identity card or passport or other applicable official identity document and the source of the wealth and property of the person.

107. Nominee services are widely used in the Seychelles. Typically, the CSP provides these services and will act, for instance, as director or as nominee shareholder, or both. The Seychelles’ authorities confirmed that in these instances all identification documents are kept by CSPs at the registered office and made available on request of the Seychelles’ authorities. They also confirmed that when someone acts as nominee shareholder in an IBC, the name of the nominee, as well as the name of the real shareholder must be reported in the register of members (s. 4 AML Act).

108. Nominees not acting by way of business are not covered by the Seychelles’ AML obligations and are thus not obliged to hold information on

the persons for whom they act. The Seychelles authorities reported that the vast majority of situations involving nominee ownerships are covered by the AML/CFT Act although they have no experience in collecting such information. The gap in relation to non-professional nominee shareholders did not prevent effective EOI during the period under review, nevertheless Seychelles should monitor its impact on EOI in practice on an ongoing basis.

Conclusion

109. The availability of ownership information in relation to domestic companies is ensured in the Seychelles through registration with the Registrar of Companies and provision on an annual basis of all shareholders details to this authority. In practice this information is available when needed and easily retrievable.

110. The Seychelles' laws also provide that off-shore companies must keep ownership information on shareholders. Although this information is not held by government authorities this information or a copy of it may be kept by CSPs. CSPs are inspected by the SIBA and the FIU and correctness and accuracy of the records maintained are reviewed on these occasions. Nevertheless, when the copy of the share register is kept at another place in Seychelles, there is no programme of supervision of record keeping obligations. The issue of the effectiveness of sanctions for breaches of compliance with the obligation to keep this information is addressed below (see section A.1.6).

Bearer shares (ToR A.1.2)

Domestic Companies

111. Before the end of 2011, the Seychelles' legal and regulatory framework did not require ownership information pertaining to bearer shares issued by domestic companies to be available as the identity of the holder of bearer shares did not have to be reported in the share register. On 21 December 2011, the Seychelles adopted the Companies Ordinance (Amendment) Act, 2011 whereby:

- a company incorporated under the Act, is prohibited from issuing any bearer shares; and
- a company that had issued bearer shares before the commencement of the Act must:
 - cancel any bearer share certificates and convert them into registered shares; and
 - update the share register accordingly.

112. Companies had three months from the entry into force of the law (27 December 2011) to comply with this new obligation. From 27 March 2012, ownership information will be available in relation to holders of bearer share certificates formerly issued by domestic companies. The Seychelles authorities have nevertheless advised that from an assessment made of the Registrar's records no companies registered under the Companies Ordinance 1972 have ever issued bearer shares.

International business companies

113. Pursuant to section 9(1)(a) of the International Business Companies Act, 1994, IBCs can issue bearer shares. However, according to amendments to the IBC Act, enacted in June 2009, where an IBC issues bearer shares, it must maintain details in its share register on the persons holding the bearer shares (section 28 of the amended Act). Information to be kept in that situation includes:

- the name and address of the holder of bearer shares in the company;
- the number of each class and series of bearer shares held by each holder;
- the date on which the name of each holder of bearer shares was entered in the share register;
- the date on which any holder of bearer shares ceased to be a member.

114. Section 30 of the International Business Companies Act, as amended in 2009, provides that a share issued to bearer is transferable by delivery of the certificate relating to the share and notification of transfer to the company's registered agent (s. 30(5)). This notification is to be made in writing, must be signed by the transferor and state the name and address of both transferor and transferee as well as the date on which the certificate to which the share relates was delivered (s. 30(6)). Upon receipt of the notice, the registered agent enters in the share register the name and address of the transferee as well as the date on which it ceased to be the holder of the relevant bearer share, which is deemed to be the date on which the registered agent received notification of transfer (s. 30(7)). Shareholders have no rights in the company until they are registered in the share register (s. 28).

115. The Seychelles International Business Companies (Amendment) Act, 2009 does not provide for any transitional period for the application of these new requirements which were applicable from the entry into force of this Act that is on 1 June 2009. The Seychelles authorities advised that due to practical reasons, the SIBA issued a circular on 4 August 2009 which extended the timeframe for all IBCs to comply with the 2009 amendment until 1 January 2010.

116. As already mentioned all international business companies must have a registered agent in the Seychelles (s.39 of the IBC Act). Moreover, all company service providers are professionals covered by the AML law (s.2 of the Anti-Money Laundering Act, 2006) and in this regard must perform customer due diligence and have knowledge of all their clients. This is a further requirement ensuring the accuracy of information reported to the company registered agent upon transfer of bearer shares.

117. However, some service providers have reported that there may be instances where the transfer of bearer shares is not notified to the registered agent in the Seychelles. Although not notified, the transferee could nevertheless preserve its rights in the company in the Seychelles. This could be the case, for example, when a bank acts as an intermediary between a shareholder and the IBC. Although the ownership of bearer shares cannot be legally transferred by the non-compliant shareholder to another person and, under the Seychelles' laws, the new shareholder would be prevented from exercising its rights in the company, these impediments to the exercise of shareholder rights result in a suspension but not a termination, of shareholder rights.

118. In practice it seems that the system to record the transfer of bearer shares in the Seychelles contain weaknesses and that bearer shareholders can remain undetected by the CSP or the Seychelles' authorities for a potentially extended period of time, until the transferee notifies the registered agent. Accordingly, a holder of a bearer share could, in effect, remain anonymous until the point where it was necessary to exercise his/her rights in the company. This would prevent information about the holder of such shares being available in all instances in the Seychelles. It is therefore recommended that Seychelles ensure that information on the owners of bearer shares is available within the Seychelles in all cases.

119. From a review of its records as at June 2013, the SIBA reported that out of 117 000 IBCs now incorporated in the Seychelles, 7 000 have issued bearer shares (i.e. 7%). After the new provisions in relation to bearer shares were introduced in the Seychelles in 2009, the SIBA have checked compliance with these new obligations during its on-site inspections (82 carried out during the period under review). Registers of members are also checked during on-site inspections to determine whether identity of all shareholders, including the holder of bearer share certificates, is maintained by the CSP. No specific deficiency has been found by the SIBA in this respect. However, as described above, there may be situations where transfer of shares may not be properly recorded, hampering the identification of their real holders.

Partnerships (ToR A.1.3)

120. Four types of partnerships may be set up under the Civil Code of the Seychelles, 1976:

- universal partnerships of property;
- universal partnerships of profit;
- particular partnerships; and
- commercial partnerships.

121. In addition, under the Limited Partnership Act, 2003, the Seychelles' law also allows for setting up limited partnerships. These partnerships generally have one or more general partners who are liable for all debts and obligations of the partnership and one or more limited partners who are not liable for debts or obligations. Limited partnerships may not carry on business in the Seychelles.

Partnerships set up under the Civil Code of the Seychelles, 1976

122. Every firm¹¹ having a place of business in the Seychelles and carrying on business under a business name is required to register under the Registration of Business Names Act, 1972. Due to this requirement, partnerships incorporated under the Civil Code of the Seychelles, 1976 must register with the Registrar of Companies and file, within 3 months after they commence to use the business name, a statement containing the names, former names, nationality, age, sex, the usual residence and any other business occupation of each of the individuals who are partners, and the corporate name and registered and principal office of every corporation which is a partner (section 6(1) of the Registration of Business Names Act, 1972).

123. If the partnership carries on business under the names of its partners, there is no requirement to be registered.

124. When there is an obligation under the Registration of Business Names Act, 1972 to be registered, partnerships set up under the Civil Code of the Seychelles, 1976 are required within 28 days to notify the Registrar of any change in the business name, the address of the principal or any other place of business, the nature of business and the names of the partners. As far as registration with the Registrar is concerned, the practices described for domestic companies also apply to general partnerships. In all instances, partnerships carrying out a business activity must also apply for a business

11. A firm must be understood as a body of two or more individuals or corporate bodies who have entered into partnership to carry on business for profit.

license with the Seychelles Licensing Authority. All information received by the Registrar is provided on a daily basis to the SRC, for tax registration purposes. The Seychelles licensing Authority does the same on a monthly basis.

125. Section 39 of the Business Tax Act, 2009 provides for the taxation of partnerships. The partnership's income is taxed in the hands of the partners and not the partnership itself. The partner's share of partnership income is set out in the partnership agreement. The assessable income of the partnership is computed in the same manner as if it were a separate taxable entity. Since 2012, only the partnership has to file an annual return with the SRC (S.I. 66 of 2012 amending section 39 of the Business Tax Act 2009 and providing that partnerships are liable entities for business tax purposes. Partners are no longer taxed and are not required to lodge separate returns). This tax return must contain the name of each of the partners as well as details of the distribution of profits amongst them. The compliance with return filing obligation is about 75%. To improve voluntary compliance a decision was taken by the Revenue Commissioner to issue a moratorium on penalties for the years 2009-12 to motivate non-compliant partnerships to come forward and lodge their returns as there were no risks of penalties being imposed.

126. General partnerships must register with the SRC within 14 days of commencement of a business activity (Revenue Administration Act, Regulation No 2). As far as registration for tax purposes is concerned, the practices of the SRC in relation to general partnerships are the same as those that apply to domestic companies.

127. Finally, the composition of partnerships formed under the Civil Code of the Seychelles, 1976, including the identity of partners, can also be determined from the partnership deed which currently governs the partnership. While there is no requirement to make this partnership deed available and in particular to provide it to administrative authorities, according to the Seychelles' authorities, under normal circumstances, this deed must be kept either at the partnership's registered address, principal place of business or with one of the partners and can be requested by government authorities. To this end, the SRC can rely on its domestic information gathering measures under which it is empowered to request any document from any persons in the Seychelles (see s. B.1 below).

128. The identity of partners can therefore be known as this information is available within the hands of registration authorities or the Revenue Commission or at least in the partnership deed to be kept by the partnership itself. In practice, this information can easily be retrieved from its records by the SRC in the event that an incoming request is received. The SRC has no practical experience of exchanging such information.

Limited partnerships set up under the Limited Partnership Act, 2003

129. Limited partnerships under the Limited Partnership Act, 2003 are required to register with the SIBA and, pursuant to section 9(1) of the same Act, file a statement containing:

- the name of the limited partnership;
- the general nature of the business of the limited partnership;
- the address in the Seychelles of the registered office of the limited partnership;
- the full name and address of the designated general partner and of other general partners; and
- a declaration that the limited partnership will not carry on business in the Seychelles except as necessary for the business of that limited partnership outside the Seychelles.

130. For registration, disclosure of information regarding both general partners – with the exception of the designated general partner – and limited partners is not required. Registration of limited partnerships is carried out by the SIBA in the same way as for IBCs. The SIBA records the name of the general partner that must be either an IBC incorporated under the IBC Act, a company issued with a Special Licence under the Companies (Special Licence) Act, or any person resident outside the Seychelles as this person will be in charge of maintaining all necessary documents that the Seychelles’ laws require to be kept at the registered office. One general partner must at least be an IBC under the IBC act or a CSL company. No other records are kept by the SIBA.

131. Pursuant to the Limited Partnership Act, 2003 section 10, any changes to the information contained in the statement submit to SIBA for registration need to be provided to the Registrar specifying the nature of the change within 60 day of such change. When the changes relate to persons ceasing to be a general partner, the updated information must however, be provided within 15 days.

132. As regards tax requirements, a limited partnership is not liable to business tax and is therefore, not obliged to fill out a tax return including, in particular, the identity of the partners.

133. While ownership information is not directly available to registration authorities and the Revenue Commission as part of registration, pursuant to section 11 of the Limited Partnerships Act, 2003 the designated general partner is required to maintain or cause to be maintained at the limited partnership’s registered office in the Seychelles a register containing the partners’ names and addresses. This Register must be updated within 21 days of any change in the particulars therein.

134. The provision of a registered office for limited partnerships can only be undertaken by CSPs. To make sure that all records in relation to limited partnerships are kept, the SIBA, as part of its supervision functions, can inspect all records maintained by general partners¹² at their registered office. The general partner's record-keeping compliance inspections are conducted periodically by SIBA at the applicable IBC's or CSL's registered office. If the general partner is a CSP, as described above, all CSPs are inspected within one year of licensing and their records are audited on that occasion. Thereafter, on-site inspections can also take place, should the SIBA think this is necessary. There is however no on-site inspection cycle under which all CSPs are inspected on a regular basis.

135. If the general partner is a CSP, its records will also be inspected by the FIU. CSPs acting as a general partner or providing a registered office are required by law to keep identification information relating to their clients, which includes limited partners of limited partnerships. The FIU will check during its on-site inspections whether these obligations are complied with. As previously mentioned, all CSPs were inspected during the period 2008-10 and a new cycle is expected to be launched soon.

Trusts (ToR A.1.4)

136. While there are no domestic trusts under the Seychelles law, the International Trust Act, 1994 allows international trusts to be set up where the settlor is not at any time during the life of the trust resident in the Seychelles and where at least one trustee is resident in the Seychelles and no trust property is situated there (section 4(1)(a)(b)(c)). The settlor also has the power to choose the proper law of the international trust (section 6).

137. International trusts may be set up by an oral declaration, a written instrument (a deed) or by will (section 15(1)) but the normal procedure is by deed.

Registration requirements

138. When creating an international trust, it is a requirement that the settlor go through a local international trustee service provider licensed to conduct international trust business under the International Corporate Service Providers Act, 2003. Such licenses can only be granted to domestic companies which are required to maintain their place of business in the Seychelles (sections 3(2)(a) and 8(1)(a) of this Act).

12. At least one of this general partner must be a Seychelles' IBC or CSL company (s. 4(6) and 4(7) of the Limited Partnership Act, 2003.

139. A declaration must be made to the SIBA by the resident licensed trustee in order for the international trust to be registered. Pursuant to section 75(1) of the International Trusts Act, 1994 this declaration contains the following information:

- the settlor is not a resident of the Seychelles;
- the trust property does not include any immovable property situated in the Seychelles; and
- the trust qualifies as an international trust.

140. There is no other registration process for international trusts from the requirement to file this declaration with the SIBA.

141. With regard to tax obligations, an international trust is not liable to tax and is, as a consequence, not required to file a tax return unless requested to do so by the Revenue Commissioner. It follows that no information on settlors, trustees or beneficiaries of trusts is held on a regular basis by the Seychelles Revenue Commission.

Information held by trustees and international service providers

142. It is a requirement for trusts wishing to be registered in the Seychelles to go through an international service provider acting, in this context, as a trustee.

143. An International Trusts (Amendment) Act was adopted by the Seychelles on 21 December 2011. Section 29A of this Act provides that the trustee is required to keep at the trustee's principal place of business in the Seychelles a register containing:

- the full name, address, nationality or place of incorporation of each trustee, beneficiary and settlor;
- the date on which a person is appointed or otherwise became a trustee, beneficiary or settlor; and
- the date on which a person ceases to be a trustee, beneficiary or settlor.

144. All trustees are required to comply with this obligation within three months of the commencement of the International Trusts (amendment) Act 2011 (s.2(e)), that is by 27 March 2012 at the latest.

145. As a result of the most recent amendments, the Seychelles' International Trusts Act ensures that ownership information in relation to international trusts is available in the Seychelles.

146. Service providers wishing to provide trust services must be so licensed by the SIBA. Before granting a license the SIBA will check a number of details, including knowledge of trust matters evidenced by a diploma or a training course from a recognised university or body (such as STEP). The SIBA also makes sure that the trustee has a sound financial base to cover its legal obligations.

147. As in the case of CSPs, all TSPs are inspected within one year of licensing and their records are audited. Thereafter, on-site inspections can also take place, should the SIBA think it necessary. The SIBA reported that a total of 28 compliance review visits took place during the period 2009-12. The compliance reviews performed covered the following areas: accounting and auditing, compliance testing, internal controls, human resources and corporate governance. There are however no on-site inspection cycles undertaken by the SIBA under which all TSPs are inspected on a regular basis. Following the entry into force of the latest amendments to the International Trust Act, the SIBA advised all TSPs of the changes through meetings and seminars.

148. Records maintained by TSPs are also inspected by the FIU. TSPs acting as trustees are required by law to keep identification information relating to their clients, which includes settlors and beneficiaries of trusts. The FIU will check whether these obligations are complied with during its on-site inspections. All TSPs were inspected during the period 2008-10 and a new cycle is expected to be launched soon.

149. The Seychelles' authorities have no experience in collecting information pertaining to trusts and have never been asked to provide such information.

Foundations (ToR A.1.5)

150. The Seychelles enacted a Foundations Act in 2009 providing for the establishment and regulation of foundations established in the Seychelles and also those established overseas which operate in the Seychelles. The legislation provides for the creation of foundations for the benefit of beneficiaries or to carry on a specified purpose. Foundations can be established for charitable or non-charitable purposes, or for both purposes.

151. A foundation is a separate legal entity which the founder transfers assets to. When transferred, these assets are the sole property of the foundation and no longer form part of the founder's personal estate. The assets of a Seychelles' foundation cannot include any movable property situated within the Seychelles territory. A Seychellois foundation may hold interests in the Seychelles' IBCs or limited partnerships or be a beneficiary of a Seychelles' trust or foundation.

152. Pursuant to section 3 of the Foundation Act, 2009, a foundation is established by a charter made in writing and signed by one or more founders. Section 4 of the same Act states that the charter must specify, amongst other things:

- the name and address of the founders;
- the object of establishing the foundation;
- the establishment of the foundation council;
- the name and address of the foundation's registered office and its registered agent in the Seychelles;
- the names and address of each of the initial members of the foundation council.

153. The charter may also provide, but it is not mandatory, the name and address of the beneficiaries, or alternatively beneficiaries may be designated at a later date and identified upon the winding up of the foundation (section 4(2) of the Foundations Act, 2009).

154. Where the identity of beneficiaries is disclosed in the charter, section 59 of the Foundations Act, 2009 requires that a beneficiary must, by reference to the charter or regulations, be identifiable by name or ascertainable by reference to a class or a relationship to another person, whether or not living at the time of establishment of a foundation or at the time by reference to which, under the terms of charter or regulations, members of a class are to be determined.

Information kept by registration authorities

155. Pursuant to section 21 of the Foundation Act, 2009, after being set up, foundations are required to be registered with SIBA, which is the registration authority. For registration, the registered agent is required to submit the foundation charter, which must be signed by one or more founders. As mentioned above, the disclosure of foundations' beneficiaries is not a requirement.

156. Part IX of the Act (section 78 and 79) deals with overseas foundations. It provides that an entity registered or organised in a jurisdiction other than the Seychelles which has the legal characteristics necessary for establishing as a foundation in the Seychelles may conduct business as a foundation as per the provisions of the Act. The overseas foundation is required to approve the articles of continuation so as to meet various requirements.

157. Articles of continuation of overseas foundations must also be registered with the Registrar. The registration of articles of continuation makes

the overseas foundation a foundation to which Foundations Act, 2009 applies. There is no legal requirement to disclose the identity of founders or the name of beneficiaries in these Articles.

158. The Registrar is required to keep a register having information about each foundation established under the Foundations Act, 2009 (section 107). This register, *inter alia*, contains the name and address of each member of the foundation council, if applicable, and also the name and address of the registered agent. This register is open to public inspection.

159. As the registration authority, the SIBA does not keep in the register any records relating to founders' and beneficiaries' identities but founders' identities can be found in the charter. In addition, no information is to be disclosed to the Revenue Commission by foundations as these entities are expressly outside the scope of the Business Tax Act, 2009. As a consequence, foundations do not have any tax obligations.

Information kept by the foundation

160. A foundation is required to keep at the registered office minutes of all meetings of councillors and copies of all written resolutions consented to by the councillors at the registered office or in such other place as the councillors deem fit (section 46(1) of the *Foundations Act, 2009*). The minutes of council meetings and copies of all written resolutions are required to be kept for at least seven years irrespective of any subsequent event (section 46(5)).

161. On 21 December 2011, the Seychelles adopted the Foundations (Amendment) Act 2011 which provides that all foundations must keep at their registered offices in the Seychelles, registers containing information not only on the members of the foundation council but also on beneficiaries founders of foundations (Foundations Act s.77), foundation protector (supervisory person) and any (non-councillor) authorised agent or power of attorney holder. This register must detail the date on which this person becomes beneficiary or founder or is appointed as member of the foundation council and:

- in the case of a natural person: (i) his or her name; (ii) his or her business or usual residential address; (iii) his or her nationality; and (iv) his or her date of birth;
- in the case of a legal person: (i) its name; and (ii) its registered or principal address.

162. As a result of the most recent amendments, the Seychelles now ensures that ownership information in relation to is available in the Seychelles

Information held by service providers

163. All foundations are required to have a registered agent in the Seychelles, licensed under the International Corporate Services Providers Act, 2003 to conduct foundation services. This Act requires them to know and be able to identify all parties to a foundation (paragraph 1, Schedule 3).

164. Within one year of licensing, all CSPs are inspected and their records are audited. Thereafter, on-site inspections can also take place, should the SIBA think this is necessary. There are however no on-site inspection cycles undertaken by the SIBA under which all CSPs are inspected on a regular basis. Since the entry into force of the latest amendments made to the Foundation Act, the SIBA has advised all CSPs of these latest changes, through meetings and seminars.

165. Records maintained by CSPs will also be inspected by the FIU. CSPs managing foundations or providing a registered office are required by law to keep identification information relating to their clients, which includes founders and beneficiaries of foundations and the FIU will check during its on-site inspections whether these obligations are complied with. As previously mentioned, all CSPs were inspected during the period 2008-10 and a new cycle is expected to be launched soon.

Enforcement provisions to ensure availability of information (ToR A.1.6)

166. Every company incorporated under the Companies Ordinance, 1972 is required to keep a register of its members including their names and addresses, a statement of their shareholdings, the date at which they became or ceased to be members. This Register must be kept at the registered office of the company and a notice of its location must be sent to the Registrar of Companies (sections 102(1), 102(2) and 102(3)). In case of non-compliance with these requirements, the company and every one of its officers who are in default are liable to a small default fine not exceeding SCR 100 (USD 8) per day during which the contravention continues (sections 102(4) and 336(1)). The Registrar reported that compliance with these obligations is not monitored and that it has no experience in applying this sanction. However, the registrar also stated that domestic companies are required to file an annual return containing the name of all shareholders and that not maintaining this share register would make it difficult to comply with this obligation.

167. The Seychelles' Companies Ordinance (Amendment) Act, 2011 does not provide any sanction for companies not complying with the transformation of bearer shares into registered shares, though all companies must comply with this new obligation by 27 March 2012 at the latest. The Seychelles' authorities advised that before the Ordinance was amended, the

registrar's records showed that no companies registered under this Ordinance ever issued bearer shares. In addition, by virtue of the last amendments made to the Companies Ordinance, all domestic companies incorporated in the Seychelles now can only issue registered shares and must keep a register of members where all particulars in relation to the holders of such shares must be recorded (s. 102 (1) of the Ordinance). Companies and every officer of companies who are in default with this obligation are subject to a fine of SCR 100 (EUR 5.58) for each day during which the offence or contravention continues. As no domestic companies had issued bearer share certificates at the time the new provisions were enacted, the Registrar did not have to monitor these new rules or apply this sanction.

168. All companies that are required to file a return shall do it on an annual basis and include a list containing the name and addresses of all the members of the company. Any company in default of this is liable to a small fine not exceeding SCR 100 (USD 8) for every day during the first month of the default and SCR 250 (USD 20) for each day thereafter that the default continues (art 114 and paragraph 5(a) of Schedule 5 of the Companies Ordinance 1972). This obligation is closely monitored by the Registrar as a fee must be paid along with the submission of the annual return. When a company fails to provide this return, a notice is issued by the Registrar. This occurred in about 250 cases during the period under review. In the event that no answer is received in response to a notice, the company is included in a list of non-compliant companies, which is published in the Official Gazette. The registrar reported that this occurred in 46 instances over the period under review. If within three months of publication in the Official Gazette returns are still not lodged, companies are struck off from the register. In practice more than 90% of companies receiving a notice finally file their returns. 75% of companies whose name is published in the Official Gazette also lodge their annual returns. During the period under review, 58 domestic companies were struck off as well as 64 CSL companies.

169. All IBCs are required to keep a share register containing the names and addresses of the persons who hold registered and bearer shares in the company, the number of each class and series of shares held by each person, the date the person became and ceased to be a member. A company which contravenes this provision is liable to a penalty of USD 25 for each day or part thereof during which the contravention continues (section 28 of the International Business Companies Act, 1994). Where notification of a transfer of bearer shares in an IBC is not reported by the transferor to the registered agent, the Seychelles' law provides for a penalty of USD 25 (EUR 19) for each day during which the contravention continues. The company itself or its directors are subject to this fine. Further, there is however no system of supervision or monitoring of compliance of IBCs (as opposed to CSPs) with their legal obligations, in particular the obligation to keep and update

share register and the SIBA has no experience of applying sanctions to IBC in practice.

170. The SIBA states that should it find, during on-site inspections of CSPs, that these registers are not kept in a proper manner, the CSPs concerned would be delicensed. However, although copies of registries are typically kept at the registered office of the IBC in the Seychelles, which is the office of the CSP, they do not have to be and the IBC itself is responsible for maintaining the register, updating it and ensuring the correctness of information included in it. Therefore it is unclear how CSPs could be sanctioned if the register is not properly maintained or up-to-dated as they have no legal obligations for this.

171. Partnerships under the scope of the Civil Code of the Seychelles, 1976 must update the ownership information maintained in the business Register, where registration requirements exist. When failing to comply, every partner is guilty of an offence and liable on conviction to a fine not exceeding SCR 10 000 (USD 800) and, in default of payment, to imprisonment for up to six months. The designated general partner of a limited partnership who fails to keep a register of limited partners containing the particular relating to these limited partners is liable to a fine of USD 25 (EUR 19) for each day during which the contravention continues (Limited Partnerships Act s. 11(4)).

172. With regards to international trusts, a service provider acting as trustee and providing to SIBA a declaration with false information or asserting that requirements to be recognised as an international trusts are met while they are not is guilty of an offence and on conviction liable to a fine of SCR 200 000 (USD 16 000) and to imprisonment for 10 years (sections 75 and 77 of the International Trusts Act, 1994). A trustee who fails to keep a register of settlors, trustees and No beneficiaries in contravention with section 29A of the International Trusts Act is liable to a fine not exceeding SCR 250 000 (EUR 13 943¹³) (International Trusts (Amendment) Act 2011 s. 29(4)).

173. There are no penalties for a foundation failing to be registered but, without being registered, a foundation would not have any legal existence. Any amendments to the charter must however be submitted to the Registrar within fourteen days of the amendment. A foundation that contravenes this is liable to a penalty of USD 50 per day for each day during which the contravention continues. A foundation that fails to comply with its obligation to keep a register of councillors, founders and beneficiaries commits an offence and is liable upon conviction to a fine not exceeding USD 25 000 (EUR 18 868) (Foundations Act s. 77).

13. EUR 1 = SCR 15.54 cf. www.xe.com/fr/ accessed on 6 June 2013.

174. As far as limited partnerships, international trusts and foundations are concerned, the SIBA has no experience in applying sanctions provided by the Seychelles' laws and it has not been able to clearly define the circumstances in which it would apply such sanctions or how they would be applied.

175. Operation of the Seychellois offshore system is based on the intermediation of licensed service providers. These agents are licensed and monitored by SIBA. The directions and guidelines are binding on the licensee and should licensee acts in contravention to any direction or guidelines or the Code of Practice, it commits an offence and is liable on conviction to a fine of SCR 300 000 (USD 24 000) and where the offence continues subsequent to the conviction, that person is liable to a fine of SCR 6 000 (USD 500) for each day that the offence is continued (section 16 of the International Corporate Service Providers Act, 2003).

176. Under the International Corporate Service Providers Act, 2003, when the SIBA has reason to believe that a licensee is in breach of any regulations made under this Act or any other law, the authority may (i) require the licensee to take such steps as the Authority deems necessary to comply with the law; and (ii) specify the period of time for such steps to be taken; or (iii) suspend the licence for a period not exceeding a period of thirty days except otherwise ordered by a Court upon application of the Authority (s. 14 (1) and (2)). The Authority may revoke the license of the registered agent if the registered agent contravenes the provisions of the International Corporate Service Providers Act, 2003 or any other law (s. 15(1)(b)). These sanctions apply in case of breach or contravention with any requirement under the International Business Companies Act. The SIBA reported that these sanctions would be applied in the event a CSP would not comply with its obligation to maintain or to update ownership information, typically for not correctly recording ownership information on holders of bearer share certificate in IBCs.

177. Generally speaking, given the reliance that is placed on CSPs and TSPs in the Seychelles and the legal obligations that are put on them to have information, these professionals are closely monitored and inspected. During these inspections the conditions in which information relating to holder of bearer shares certificates is kept will be reviewed. Breaches with this obligation may be sanctioned by suspending or revoking the CSP license. For the SIBA, these sanctions act as a deterrent and put a lot of pressure on CSPs and TSPs. It has indicated that for breaches of their legal obligations CSPs and TSPs could be delicensed. Nevertheless, it appears from the review that CSPs considered it unlikely that such a sanction would be applied in the event of a CSP not complying with its obligations to keep ownership information and it is questionable whether these sanctions are appropriate in all instances, where breaches of record keeping obligations are concerned.

178. Sections 14 and 15 of the International Corporate Service Providers Act, 2003, make provision for the suspension and revocation of a license. SIBA has in the last five years suspended 12 licenses, revoked 3 licenses and refused to grant license to 5 applicants. In one case, this revocation was appealed by the CSP concerned. The case is still pending.

179. The Seychelles' reporting entities that fail to perform CDD in compliance with section 4 of the AML Act or to keep records in accordance with section 6 of the same Act are guilty of an offence (AML Act s.46). The sanction is a fine not exceeding SCR 1 000 000 (EUR 55 772) and/or imprisonment for a term of up to 12 years. The FIU has no experience in applying sanctions in the case a CSP not complying with its CDD obligations.

Conclusion

180. When relevant entities are required to have ownership information available under the Seychelles' laws, these requirements are supplemented by sanctions in cases where these obligations are not complied with. In practice as far as off-shore entities are concerned, the Seychelles' authorities put emphasis on CSPs, who must keep, in the case of an IBC, a copy of the share register or details of the location where the register is kept in the Seychelles (although it is the responsibility of the IBC itself to maintain this register and to update it) and a record all transfers of bearer share certificates. Consequently, the SIBA primarily supervises and monitors compliance of these service providers with their legal obligations. This includes obligations to keep ownership information when so required by law (for instance, obligation to keep records of transfers of bearer share certificates).

181. The SIBA stated that in relation to the keeping of ownership information, the most effective sanction would be to suspend or revoke the license of a service provider not complying with its legal obligations. However, although CSPs must keep a copy of the share registers at their registered office, or details of the location where the register is kept in the Seychelles, they are not legally bound to maintain or update them. In the case of IBCs the responsibility to update the share register lies with the IBC and not with the CSP. As regards bearer shares, where there is a legal obligation on the CSP it seems unlikely that such a sanction would always be appropriate.

182. IBCs which do not comply with their legal obligations to maintain share registers are also subject to sanctions, however, these have never been applied in practice and it has also not been possible to clearly understand in what circumstance the SIBA would directly apply fines to the IBCs concerned should ownership information not be kept or not be updated. Moreover, where the share register is not kept by the CSP there is no monitoring system in place to ensure that it is properly maintained. Therefore, the

effectiveness of enforcement measures in the Seychelles is uncertain and it is recommended that the Seychelles' authorities put in place effective enforcement provisions to ensure that up-to date ownership information is available in all instances in the Seychelles.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place	
Phase 2 rating	
Non-Compliant	
Factors underlying Recommendations	Recommendations
There are currently no effective sanctions in the event that ownership information in relation to IBCs is not available.	The Seychelles should have effective enforcement provisions to ensure that up-to-date ownership information in relation to IBCs is available to its authorities in all instances.
When a copy of the share register is not kept at the office of the CSP but at another place in the Seychelles, there is no monitoring system in place to make sure that ownership information is available.	The Seychelles should monitor the availability of ownership information irrespective of the place where such records are kept.
Although legal requirements have been introduced for the reporting of ownership information in relation to bearer shares, in practice there are situations where transfers of bearer shares are not notified to the company's registered agent.	The Seychelles should ensure that information on the owners of bearer shares is available within the Seychelles in all cases.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

General requirements (ToR A.2.1)

Companies incorporated under the Companies Ordinance

183. Pursuant to Article 139 of the Company Ordinance 1972, every company incorporated under that Ordinance (including CSL companies) is required to keep proper books of accounts with respect to:

- all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place; and
- the assets and liabilities of the company

184. The directors of every company are required to prepare before each annual general meeting of the company a profit and loss account as well as a balance sheet. No internal standard is required for the preparation of these accounts.

185. The books of account must be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to public inspection (section 139 of the Companies Ordinance, 1972).

186. With respect to partnerships incorporated under the Civil Code of The Seychelles, 1976, pursuant to section 32(1)(a) of the Revenue Administration Act, 2009, every taxpayer must, for the purposes of a revenue law maintain such accounts, documents and records as may be required under the revenue laws. As taxpayers in the Seychelles, partnerships incorporated under the Civil Code are submitted to these requirements.

187. Companies incorporated under the Companies Ordinance and general partnerships are required to submit audited accounts along with a list of shareholders to the Registrar. Failure to file these returns is monitored and sanctioned. As these entities are subject to tax requirements, record keeping is also monitored by the SRC, which has a programme of tax audits to check the accuracy of accounting data (see below “tax obligations”).

International Business Companies

188. Section 65 of International Business Companies Act as amended on 27 December 2011 specifically requires IBCs to keep accounting records that:

- are sufficient to show and correctly explain the IBC’s transactions;

- enable the financial position of the IBC to be determined with reasonable accuracy at any time; and
- enable the accounts of the IBC to be prepared.

189. Section 2 of the same law defines “accounting records” as documents relating to assets and liabilities of the company, including receipts and expenditure, sales and purchases and other transactions. These accounting records must be kept at the registered office of the IBC or such other place as the directors think fit (s. 65€). If the records are not kept at the registered office, the IBC must inform the registered agent (s. 65(d)). Informing the registered agent is also required when the place where such records are kept has changed. An IBC which fails to comply with this obligation is liable to pay a penalty of USD 25 (EUR 19) for each day for non-compliance (s. 65(f)). The same penalty applies to directors who knowingly fail to comply with this obligation (s. 65(g)).

190. Under Seychelles law accounting records in relation to IBCs can be kept either on shore or off-shore. These records can be kept offshore if determined by the IBC’s directors. A copy of these records can also be made available with the IBC’s CSP but this is optional and the only obligation lying with this CSP is to know the address where these records must be kept.

191. With respect to the availability of accounting records, the SIBA advised that as part of its on-site inspections, it checks whether the CSP knows the address where the records are stored and it has reported that CSPs have always been in a position to provide this address. The SIBA has not put in place any monitoring or supervision system under which it could ascertain that accounting records are maintained by IBCs under the conditions provided by law. Hence, when accounting records are kept off-shore, the SIBA has no means to establish whether these records are properly kept and cannot therefore sanction IBCs in the event they do not maintain this information. It is therefore recommended that Seychelles monitor the availability of accounting records and ensure that reliable accounting records are available at all times.

192. In practice accounting records are not usually kept in the Seychelles but at the place where business activities are carried out and service providers have reported that they would be unable to respond to a request for accounting information if requested by the SRC as they have no legal obligation to have the information. Neither would they ask the company for the information as they have no legal authority to do this. They could only provide the address at which the records were kept. CSPs and the SIBA have also indicated they will always be in a position to provide the address where accounting records are kept which should enable the requesting treaty partner to redirect its request to the country where the information is kept.

193. With regard to sanctions, the Seychelles' law provides for a daily fine in the event accounting records are not maintained. As detailed above, in most instances these records are not kept in the Seychelles and the Seychelles' authorities have not implemented any system to monitor the availability of this information. Consequently, the SIBA is not in a position to apply the sanctions provided by law if so needed. In practice SIBA reported that it assesses compliance of CSPs with their obligations and whether they have kept what they are required to maintain by law. The SIBA indicated that a CSP could have its license suspended or revoked if IBCs do not comply with their obligations. However, CSPs considered that they could not be sanctioned in instances where the law does not require them to maintain records but only the address of the place where records are stored. It is then clear that there are no effective enforcement measures that ensure the availability of accounting records in relation to IBCs and it is recommended that the Seychelles put in place effective monitoring procedures and sanctions that are effectively applied in practice.

Other financial entities

194. Almost identical requirements to those applicable to IBCs apply in relation to limited partnerships, international trusts, and foundations under the Limited Partnerships (Amendment) Act 2011 (s. 11A), International Trusts (Amendment) Act 2011 (s. 29), and Foundations (Amendment) Act 2011 (s. 75). Limited partnerships, international trusts and foundations are required to keep accounting records that are sufficient to show and correctly explain the entity's transactions, enable its financial position to be determined with reasonable accuracy at any time and enable its accounts to be prepared. The accounting records should be kept at the registered office of the entity or at a place other than the registered office on condition that the CSP has the address where these records are kept.

195. The three Acts nevertheless provide different sanctions in the case accounting records are not kept: a daily USD 25 (EUR 19) sanction on the general partner of a limited partnership, a SRC 250 000 (EUR 13 943) fine for trustees of international trusts, and a USD 50 (EUR 38) penalty for each day during which a foundation does not comply with its requirement to keep records. The same difficulties as previously exposed in relation to IBCs also apply in relation to these entities.

196. All the legal provisions referred to in the previous paragraph (as well as the provisions on IBCs) have been recently amended. The entry into force of these new provisions took place on 1 January 2013. During 2012, the SIBA advised all CSPs and TSPs of their new obligations and had meetings to present the new requirements. The SIBA also conducted targeted on-site inspections (covering 25% of CSPs) to check whether these obligations

were complied with. Since these obligations are new and have only been implemented in practice for a few months, the Seychelles' authorities should monitor the availability of this information and ensure that it is available at all times.

Tax Law

197. All businesses liable for business tax, including companies incorporated under the Companies Ordinance, 1972 and partnerships set up under the Civil Code of the Seychelles, 1976, are required to furnish an annual business tax return to the Seychelles Revenue Commission, within three months after the end of the tax year (sections 6(1) and 57(1) of the Business Tax Act, 2009). Any company in default of this is liable to a fine not exceeding SCR 100 (USD 8) for every day during the first month of the default and SCR 250 (USD 20) for each day thereafter that the default continues (section 114 and paragraph 5(a) of Schedule 5 of the Companies Ordinance 1972). Fixed penalties for failure to furnish tax returns are also provided by section 42 of the Revenue Commission Act 2009.

198. To this end, every taxpayer for the purposes of revenue law is required to maintain in the Seychelles 'accounts', documents, and records as required under the revenue law (Article 32(1) of the Revenue Administration Act 2009). Taxpayer is defined in this Act as a person liable for revenue under a revenue law. Revenue means any tax, withholding tax, duty, contribution, fee, levy, charge, additional tax, interest, and other monies liable or payable under a revenue law.

199. However, under the applicable revenue law (Business Tax Act, 2009) there are no provisions stating the level of details businesses must comply with but the Companies Ordinance provides that audited financial statements that must be kept under this law must be provided to the SRC. Hence, the level of detail of accounting data required to be provided to the SRC is sufficient to meet the terms of reference.

200. As previously described, companies and general partnerships must register with the SRC and have to do this within 14 days of commencement of business. To this end, information exchanged with the Registrar and the Seychelles Licensing Authority is very useful in ensuring the completeness of the SRC database.

201. All businesses must file an annual return with the SRC. For businesses that file their accounts themselves, this has to be done by 31 March of each year. For taxpayers using a tax agent, the returns must be lodged by 30 June, 31 July or 31 October. Tax agents must receive an annual prior approval from the SRC and must provide on that occasion a detailed list of their clients.

202. The SCR closely monitors these filing obligations. To do this it relies on its databases where all returns lodged are recorded, enabling it to send systematic reminders to taxpayers that have failed to comply with their obligations. For the period under review, around 4 000 business returns were lodged on time by taxpayers. 1 200 returns were not filed on time in 2010 and 2 350 in 2011. Statistics for 2012 are not final yet.

203. Before 2010 and the entry into force of the new Revenue Administration Act, in the event that a return is not filed after a reminder, the taxpayer concerned could be penalised upon conviction. For this purpose, the taxpayer file would be transferred to the Attorney General's Office which would decide whether a prosecution should be undertaken or not. A total of 212 prosecutions have been recorded, 87 of them relating to non-filing of returns. In 44 instances returns were eventually filed. Since 2010, no cases have been referred to the Attorney General's Office because the new law empowers the SRC to assess taxes, even in instances where tax returns have not been lodged, and to apply tax surcharges when taxpayers have not spontaneously complied with their filing obligations. The SRC reported that this constitutes a very strong incentive to taxpayers to lodge their annual returns on time. Surcharges were imposed in 959 cases in 2010 and 1901 cases in 2011 (statistics for 2012 are not yet available).

204. In addition to this, the SRC also conducts tax audits which include correctness check of accounting records maintained by businesses carrying out activities in the Seychelles. In 2011, 7 full and 243 targeted audits took place, 90 and 252 in 2012. Records for previous years are not available. Accounting deficiencies were found in about 10% of cases.

205. Pursuant to the Business Tax Act limited partnerships, international trusts and foundations, as tax exempt entities, do not have any requirements under the tax laws related to maintenance of accounting records.

Underlying documentation (ToR A.2.2)

Companies registered under the Companies Ordinance, 1972

206. While companies registered under the Companies Ordinance, 1972 are required to keep proper accounts of all sums received and expended and as well as account for all the assets and liabilities of the company, the requirements focus on maintaining all transactions records in order to derive assessable income and thus corroborating transactions and tax implication of transactions.

IBC, limited Partnerships, international trusts and foundations

207. With regards to these entities, with the adoption of several provisions in 2011, there are now clear obligations to keep underlying documents, including receipts and expenditure, sales and purchases and other transactions, in accordance with the international standard (see description above).

5-year retention standard (ToR A.2.3)

208. As taxpayers, companies incorporated under the Companies ordinance 1972 and partnerships created under the Civil Code of the Seychelles, 1976 are subject to the Revenue Administration Act, 2009 and are obliged pursuant to Article 32(1)(b) to keep their accounting records as well as the underlying documentation for 7 year period.

209. Where a company has gone into liquidation and has been finally dissolved or where the Revenue Commissioner has notified the taxpayer that he is not required to retain the documents, the accountings records are no longer required to be retained (Art 32 of the Revenue Administration Act, 2009).

210. There is no need under the Companies Ordinance, 1972 to keep accounting records for a certain period of time,

211. All accounting records must be retained by IBCs, limited partnerships, trustees and foundations for seven years from the date of completion of the transactions to which they relate (s. 65€ of the IBC Act, s. 11A of the Limited Partnerships (Amendment) Act 2011, s. 29 of the International Trusts (Amendment) Act 2011, and s. 75 of the Foundations (Amendment) Act). When accounting information must be kept by service providers, the AML Act, requires that all information recorded be kept for a minimum period of 7 years (Art6(2)).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Non-Compliant	
Factors underlying Recommendations	Recommendations
No system of monitoring compliance with accounting record keeping requirements is in place, which may result in the legal obligation to keep accounting records not being enforced. In addition, a number of accounting record keeping obligations have only been implemented since 1 January 2013 and are therefore untested in practice for EOI purposes.	The Seychelles' authorities should make sure that reliable accounting records for all relevant entities are available at all times.
There are no effective sanctions where IBCs do not keep accounting records and existing sanctions have never been applied in practice.	The Seychelles should put in place and exercise effective sanctions that ensure records for IBCs are available.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

212. All banks wishing to operate in the Seychelles must first be licensed by the Central Bank of the Seychelles (CBS). Since 2011, all banks have had to have a single license allowing them to conduct either on-shore or off-shore operations. Seven banks are currently licensed, of which, five are branches of foreign banks. During the licensing process, the CBS closely works with the FIU which is asked to provide information on the bank itself and its administrators. To this end, the FIU will search information from other FIUs.

213. Banks must routinely report to the CBS, on a daily, monthly (balance sheet, profit and losses, exposure) or annual basis (audited statements). The CBS also receives reports from the FIU on a weekly basis. The accuracy of documents received is checked upon reception by a supervision division comprising 23 staff. The CBS has indicated that banks are regularly contacted to make sure that these reports are correct. On this basis, the CBS conducts on-going monitoring which can lead to an on-site inspection, should this on-going monitoring show some deficiencies.

214. The CBS reports that, on average, banks undergo on-site inspections every two years. Four persons of the supervision division are dedicated to this. If a particular bank has not been examined in one year, an on-site inspection will automatically be scheduled for the year after. Four full scope inspections were conducted in 2010, four in 2011 and three in 2012. In addition, one limited scope inspection was conducted in 2010 and two in 2011. These targeted inspections were based on analysis of returns submitted to the CBS as well as complaints from clients.

215. Before an on-site inspection is conducted, a desk audit is performed to determine which areas give rise to specific risks. During the inspection, all areas are scrutinised and lead to recommendations and a rating of the bank concerned. A report is drafted and provided to the bank and its board of directors. Depending on the seriousness of any deficiencies noted, the bank can have up to six months to address them. The main deficiencies noted by the CBS during its inspections are issues relating to weak credit quality in banks due to poor credit appraisal, monitoring and documentation, issues relating to the Board composition and expertise; weak business plans; weak management oversight especially relating to internal controls; lack of business continuity management; lack of policies and procedure manuals; IT risks; inaccuracies in returns submitted to CBS; and non-compliance with regulations

216. So far, the CBS has not applied any sanctions as a follow-up to an on-site inspection because of a high level of cooperation between banks and the CBS. To apply, sanctions, the CBS would have to transfer the file to the Attorney General's Office which would decide whether the financial institution concerned should be prosecuted or not.

217. The AML Act, 2006 was amended in 2008 and again in 2011. Under this Act (s.2 and schedule 2 to the Act), financial institutions licensed under the Financial Institutions Act are considered as reporting entities and must adopt preventive measures to fight money laundering.

218. Pursuant to the AML Act, section 4, a reporting entity shall apply CDD measures in respect of customers, business relationships and transactions, and conduct on-going monitoring of business relationship as prescribed in regulations.

219. New Regulations, gazetted on 17 April 2012, aim at elaborating the rules relating to CDD and a definition of beneficial ownership. These rules have been explained at Section A.1.1 above.

220. Reporting entities must keep all records in relation to CDD for seven years from the date of: (i) receipt of identity of a customer; (ii) any transaction or correspondence: or (on which the business relationship ceases, whichever shall be the latest (draft Regulation 8(5)).

221. Compliance by banks with their AML/CFT requirements is also reviewed by the Financial Intelligence Unit (FIU). After its creation, in 2006,¹⁴ the FIU established a round of on-site inspections of all entities and persons subject to the Seychelles' AML/CFT rules. 15 staff work for the FIU of which 4 are dedicated to these functions and 26 on-site inspections took place in 2010, 16 in 2011, and 9 in 2012. As part of this cycle, and in addition to on-site inspections also conducted by the CBS, each of the seven branches of foreign banks established in the Seychelles are inspected every 2/3 years. In-between targeted inspections can also take place.

222. On-site inspections for financial institutions go into more depth than for CSPs and that more time is spent on-site. During an on-site inspection, the FIU checks, amongst other things, the following records: policy and procedure to conduct CDD; how identification of clients is done; keeping of identification and transaction records for seven years; policy in relation to politically exposed persons; training of staff; dissemination of suspicious transaction reports. To this end, the FIU audits all documentation and transaction records kept by the financial institution to see whether all documents required by law to be maintained can be easily retrieved.

223. Results of on-site inspections conducted show that most of identification and transaction documents are maintained in files, including information on beneficial owners. This is partly the result of the educational process implemented at the time when the fight against money-laundering was part of the mission of the CBS. Hence, banks are clearly aware of their obligations in this area. The FIU has reported that what is sometimes missing is the procedure manual which gathers all principles that are provided by law. When new requirements are introduced, these guides are not always updated in a timely fashion. Some shortcomings in relation to staff training courses are also noted.

224. After an on-site inspection has been conducted, a report containing recommendations is drafted by the FIU and provided to the bank concerned. The bank then has six weeks to provide its comments and usually all recommendations are swiftly addressed. Follow-up on-site inspections can be organised if it is necessary to get evidence that deficiencies have been addressed.

225. As the level of compliance of banks with their AML/CFT legal obligations is high, none of them has ever been sanctioned for breach of AML/CFT principles. The FIU considers the most appropriate sanction in case of non-compliance would be to ask the CBS to revoke the license of the bank concerned. The FIU could also freeze the account of the bank concerned for 90 days. Otherwise, the case would be transmitted to the Attorney General's office which would decide whether the bank concerned should be prosecuted or not.

14. These functions were previously carried out by the CBS itself.

226. In 2012, the SRC made 172 requests for bank information for domestic purposes. Answers were provided in all instances. The FIU also received during the same year 185 requests for information in relation to banks from foreign authorities. In all instances the banks concerned were in a position to provide the information requested by the FIU.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

B. Access to Information

Overview

227. A variety of information may be needed in respect of the administration and enforcement of the relevant tax laws and jurisdictions should have the authority to access all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities.

228. Since the enactment of the Revenue Administration Act, 2009, the Seychelles Revenue Commission (SRC) has had broad powers to collect information for “the purpose of administering any revenue law”. All accounts, documents and records, in respect of any person can be accessed by the tax authorities. This covers ownership, banking and accounting information. For domestic purposes, these powers are widely used by the SRC either to collect information by way of a notice or directly at the premises of the persons concerned, be they private or legal persons. These measures have been successfully used in more than 1 650 instances over the period under review, including in 172 cases to collect bank information.

229. The Revenue Administration Act and the Seychelles Revenue Commission Act were amended in 2011 to clarify that one of the function of the SRC is to answer incoming EOI requests received from treaty partners and that to answer these requests, the domestic access to information powers granted to the Revenue Commission can be used. These amendments also clarify that these powers can be used notwithstanding any secrecy provisions contained in any other law adopted by the Seychelles, lifting any confidentiality rules contained in other pieces of legislation. For the period under review, the Seychelles received, for tax purposes, one request where bank, ownership and accounting information was asked to be provided. This information was successfully collected by the Seychelles although not required for domestic purposes.

230. The new legal framework implemented by the Seychelles in 2011 authorises access to information for EOI purposes without any domestic tax interest requirements or restrictions due to secrecy provisions. The practices of the Seychelles' authorities have demonstrated that available information is readily accessible for domestic purposes. For EOI purposes and considering the Seychelles' limited experience, it is recommended that the Seychelles' authorities continue to monitor access to information.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

231. The Commissioner of the Seychelles Revenue Commission (SRC) has been designated by the Minister of Finance, Trade and Investment to act as competent authority for requests received under an exchange of information arrangement. The SRC was established in 2010 and is regulated by the Seychelles Revenue Commission Act, 2009. The SRC is staffed with 277 people and is in charge of managing revenues and customs. The SRC comprises a Custom Division (121 employees), a Tax Division (99 employees) and a Support Services Division (36 employees), each of them headed by an Assistance Commissioner.

232. Exchange of information is directly handled by the Revenue Commissioner's office, in particular by the legal adviser who directly reports to the Commissioner and has been tasked with the handling of these matters. Handling of incoming requests is described under section C.5 of this report.

233. Contact details of the Revenue Commissioner and the SRC have been disseminated across partner jurisdictions and are made available on the Competent Authority Database maintained by the Global Forum Secretariat.

Ownership, identity and banking information (ToR B.1.1) and Accounting records (ToR B.1.2)

234. In the Seychelles' legislation, there is no specific provision dedicated to the access to information for the purpose of international EOI. Thus, to answer an incoming request for information sent by a treaty partner, the Seychelles Revenue Commission, as the competent authority for EOI, uses the powers granted by legislation for the collection of information for domestic purposes.

235. When seeking to provide an answer to an incoming request, the SRC can first rely on information directly available to it. This covers information provided by taxpayers such as tax returns or accounting and financial records provided along with their annual returns by businesses carrying out activities within the Seychelles. The SRC also receives automatically a range of records from other authorities. This covers:

- from the Registrar: all company details and updates in real time including business names and addresses, trading names, shareholders details including identities, addresses and dates of any changes;
- from the Seychelles Licensing Authority: reports including all new and renewed license registration details by categories and all business closures in real time;
- from the Agency for Social Protection: list of reimbursement of benefits to employers and employees salary details over the past 12 months;
- from the National Population Database: access to names addresses, employment status (local or expat), national identification numbers;
- from the Seychelles Pension Fund: updated list of active registered companies along with their tax identification numbers, list of non-active companies, payroll and pensions data in respect of all active companies, sole traders and contractors in real time.

236. When the information is not already available to the SRC, the domestic information gathering measures will be used. In December 2009, the Seychelles enacted a new Revenue Administration Act (RAA), the purpose of which was to re-structure the management of the revenue administration and in particular, grant new powers to the Seychelles Revenue Commission to gather information. Pursuant to section 34(1), the Revenue Commissioner may for the purpose of administering any revenue law require any person (including offshore entities) to:

- furnish such information as the Revenue Commissioner may require;
- attend and give evidence concerning that person's or any other person's revenue affairs; and
- produce all accounts, documents and records in the person's custody or under the person's control relating to that person's or any other person's revenue affairs.

237. Moreover, section 33 of the same Act deals with investigation powers of the Revenue Commissioner for the purpose of administering any revenue law. It provides, in particular, that the Revenue Commissioner or a revenue officer authorised by him:

- has the right, at all times and without notice to full and free access to any premises, place, property, data storage device, accounts, documents, or records and has further powers relating to making extracts and seizing the records and documents;
- may make an extract of copy of any accounts, documents, records or information stored on a data storage device;
- may seize any documents or records; and
- may retain any accounts, documents, or records seized as long as they may be required for determining a taxpayer's revenue liability or for any proceeding under a revenue law.

238. As a result, the powers of the Seychelles Revenue Commission to access ownership and accounting information are very broad.

239. Both the Seychelles Revenue Commission Act 2009 and the RAA 2009 were amended in 2011 to clarify that:

- one of the functions of the Seychelles Revenue Commission is exchange of information in accordance with any tax agreement or treaty (double tax convention – DTC – or taxation information exchange agreement – TIEA); and
- the access to information powers of the Seychelles Revenue Commission can be used to comply with the Seychelles' obligations to exchange information pursuant to any tax agreement or treaty (DTCs or TIEAs).

240. The Seychelles authorities have also confirmed that these powers can be used from the date of enactment of these Acts and irrespective of the period to which the incoming request relates.

241. To access ownership information, the Seychelles authorities mentioned they use their domestic powers granted by section 34 of the RAA, outlined above. The gathering of accounting information can be made by using the same powers.

242. When an incoming request is received from a treaty partner, this request is, after analysis and decision of the Revenue Commissioner, transmitted to the Assistant Commissioner of Tax. Powers granted to the SRC by s. 34 of the RAA will be used in most instances. In that event, the officer in charge of collecting the information, be it ownership, identity or accounting information, will send a notice to the person holding the information in the Seychelles, requesting him(her) to provide information. The SRC clarified that in no event would confidential information provided in the incoming request be disclosed in this notice. This has also been stressed in the EOI

manual issued by the SRC. It is never mentioned in this notice that information is needed for EOI purposes. As for domestic uses, this notice quotes the legal basis under which information is sought (s. 34 of the RAA) and will only contain the element necessary to collect the information.

243. According to the EOI manual, when information is requested from third parties, 14 days should be given in which to reply. A seven-day extension can be granted when requested and justified by the person asked to provide the information. When the information requested is not received, a reminder granting five additional days to comply with the notice is sent. The SRC clarified that the person concerned cannot appeal against this notice as only a “revenue decision” (revenue assessment) can, under the law, be appealed. The provision of information to the treaty partner cannot be appealed either. Although these powers were used for EOI purposes in one instance only during the period under review, the SRC reported that these powers were used for domestic purposes in 247 instances in 2010, 265 in 2011 and 426 in 2012. No specific difficulties in activating these powers have been reported and the SRC usually receives the information requested in a timely fashion. For EOI purposes, the request received by the SRC covered ownership, bank and property information and this information was furnished to the treaty partner.

244. With regard to bank information, the SRC clarified that with the enactment of the RAA, a court order is no longer necessary to access this type of information, whether requested for domestic or EOI purposes. This was made clear in a legal opinion given by the Attorney General. Requests for bank information are handled in the same way as for accounting and ownership information with regard to timelines and level of detail provided in notices. The SRC advised that receiving an account number would be of help for processing the incoming request but that the request can nevertheless be handled without this information. In 2012 and for domestic purposes, requests for bank information were made in 172 instances. Only in one instance did a bank refuse to provide information. The SRC reported that a further notice was then issued, quoting the applicable sanctions. The bank information requested was then provided. In one instance over the same period, bank information was requested and successfully collected for EOI purposes

245. When information cannot be gathered under the conditions provided by s. 34 of the RAA, the SRC can then use powers granted by its s. 33 (i.e. access to premises). Two SRC officers are tasked with conducting these on-site inspections and could be asked to conduct an inspection for the purpose of collecting information for EOI purposes, though this has not been the case so far. In practice, before going to the premises, an officer needs to receive prior approval from the Revenue Commissioner but no prior

authorisation from a court is needed. This officer is then allowed, without notice, to enter any premises, including premises of private persons, for the purpose of collecting information. Any type of information can be copied, retained or seized in these instances. The use of these powers to collect information took place in three instances during the period under review. It usually takes two weeks to collect information under this procedure.

246. The EOI manual drafted by the SRC specifically mentions that EOI is not restricted to information that came into existence after the entry into force of a DTC, as long as the request has been sent after the entry into force of the EOI instrument. With regard to TIEAs, the same manual makes the distinction between criminal tax matters where information predating the entry into force of the applicable instrument must be provided and civil tax matters where only taxable periods starting after the entry into force are covered.

247. The SRC has confirmed that it has the necessary powers to require other government authorities to provide information to answer an incoming request. This includes the SIBA and any other government related agencies. This has been clearly described in the EOI manual which specifies that in these instances a seven-day timeframe is granted to the other government body. The manual also specifies that between government authorities, the notice requesting information will mention that information is sought to respond to a treaty partner.

248. The SRC has no experience of requesting information to the SIBA for EOI purposes. However, it made a request three times for domestic purposes during the period under review and in these instances, responses were swiftly provided. The SRC has also signed a Memorandum of Understanding with the Financial Intelligence Unit to organise exchange of information between the two authorities. 105 requests for information were made to the Registrar of Companies in 2012, 30 to the Immigration Department and 5 to the Seychelles Licensing Authority.

Use of information gathering measures absent domestic tax interest (ToR B.1.3)

249. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes.

250. The Revenue Administration (Amendment) Act 2011 specifically provides in sections 33 and 34 that the powers to access information which the Seychelles Revenue Commission can use for domestic purposes can also be used for carrying out obligations under a tax agreement or treaty. A tax agreement or treaty is defined in section 2 of this Act as “any agreement or

treaty between the Government of the Seychelles and the Government of one or more countries for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes or exchange of information on tax matters”. This definition encompasses all DTCs, TIEAs and multilateral tools signed or that may be signed in the future by the Seychelles and ensures that the domestic powers of the Seychelles Revenue Commission to gather information can be used to answer incoming EOI requests.

251. Similarly, the amendment made to the Seychelles Revenue Commission Act now makes sure that one of the functions of the Seychelles Revenue Commission is “to exchange information in terms of any tax agreement or treaty (s.13(1)(h))”, tax agreement or treaty being defined with reference to the RAA.

252. In sum, the 2011 amendments made by the Seychelles to the Seychelles Revenue Commission Act 2009 and the RAA 2009 eliminate any ambiguity that existed as to whether the domestic powers to gather information granted to the Seychelles Revenue Commission could be used to answer incoming EOI request.

253. The Seychelles’ experience in collecting information for EOI purposes is limited as only one request has been received so far. The requested information was successfully gathered, using the powers provided by s. 34 of the RAA. The Seychelles’ authorities have confirmed that there are no restrictions on the use of these powers for EOI purposes under the same conditions as for domestic purposes. The EOI manual developed by the SRC also specifies that when the statute of limitation has expired in the Seychelles, assistance may still be provided, should the treaty partner need this information for its own purposes.

Compulsory powers (ToR B.1.4)

254. As noted above, the Revenue Commissioner has a broad range of powers to access information and these powers include production, search and seizure powers.

255. Pursuant to Section 47 of the Revenue Administration Act 2009, a person who without reasonable cause fails to, along with others, comply with a notice under section 34 is guilty of an offence and on conviction is liable to a fine of no less than SCR 50 000 (USD 4 000).

256. Pursuant to section 48 of the same Act, a taxpayer who fails to keep and maintain accounts, documents or records as required under a revenue law is guilty of an offence and on conviction is liable to a fine of no less than SCR 10 000 (USD 800) for small business, no less than

SCR 50 000 (USD 4 000) for medium business and no less than SCR 100 000 (USD 8 000) for large business.¹⁵

257. In addition, section 51 of the RAA 2009 states that a person who obstructs or hinders a revenue officer in the performance of duties under a revenue law is guilty of an offence and is liable on conviction to a fine of SCR 100 000 (USD 8 000) or to imprisonment of not less than one month but not more by three months or to both a fine and imprisonment. This applies in the case of failure to provide bank information.

258. As regards sanctions, the SRC indicated that it would report the cases to the Attorney General's office for prosecution and it would then be the responsibility of the court to impose sanctions upon conviction. When it comes to the provision of information upon notice, the SRC reported that, rather than submitting a case to the Attorney General's office, the powers provided by s.33 of the RAA which give revenue officers the right to enter premises and seize documents if necessary, act as a deterrent and promote compliance with notices issued under s.34 of the Act. The use of the powers granted by section 33 of the RAA is now the usual practice. Ultimately, a person not complying with its obligation to provide information can also be prosecuted.

259. For taxpayers not keeping records, the SRC advised that it is empowered to assess taxes from the office and with elements at its disposal. A tax surcharge would also be applied. In all instances, businesses not keeping their records can be prosecuted. For the period under review, 212 cases were referred to the Attorney General's Office by the SRC, 87 for non-lodgement of tax returns, 58 cases for non-payment of debts and 70 for non-compliance with social security rules. All these cases relate to matters that happened before 2010 and the entry into force of the new RAA. Since 2010, the SRC has preferred to apply surcharges as it is a more effective means to deter non-compliance with filing obligations. 959 surcharges were imposed in 2010 and 1 901 in 2011. Statistics for 2012 are not yet available.

15. Small business: annual turnover less than SCR 1 000 000 (USD 80 000). Medium business: annual turnover between SCR 1 000 000 (USD 80 000) and 50 000 000 (USD 4 000 000). Large business: annual turnover over SCR 50 000 000 (USD 4 000 000).

*Secrecy provisions (ToR B.1.5)**Bank secrecy*

260. The Constitution of the Republic of the Seychelles provides for the right to privacy (Art 20). Further, pursuant to section 49 of the Financial Institutions Act, 2004, no person who has acquired knowledge in a capacity as:

- administrator, officer, employee or agent of a financial institution; or
- auditor, member of the audit committee, reorganising agent, liquidator or supervising agent of a financial institution, shall disclose to any person or governmental authority the identity, assets, liabilities, transactions or other information in respect of a customer except – ...
- when required to make disclosure by any court of competent jurisdiction in the Seychelles; ...
- pursuant to the provisions of the Anti-Money Laundering Act; ...
- notwithstanding anything in the Business Tax Act or the Social Security Act, to the Commissioner of Taxes or the Director of Social Security when authorised by a judge on proof on oath to the satisfaction of the judge that the information is required for any investigation under the Business Tax Act or the Social Security Act, as the case may be.

261. When it comes to Central Bank, section 50(2) of the Financial Institutions Act, 2004 states that except where ordered by the Supreme Court, the Central Bank, its officers and employees cannot be required to produce or disclose to any court, tribunal, committee of inquiry or other authority in the Seychelles or elsewhere any information required to be dealt with as confidential under subsection (1) (articles 50 and 51 of the Financial Institution Act), excepted, in particular, for criminal investigations.

262. However, section 34 of the RAA makes it clear that the domestic powers to collect information can be used by the Seychelles Revenue Commission notwithstanding “any contractual duty of confidentiality” or “anything stated to the contrary in any other Act”. In addition, the amendment to this Act passed by the Seychelles in December 2011 clarifies that these domestic powers to access information can also be used to answer incoming requests received from treaty partners. Therefore, the banking confidentiality provided by the Financial Institutions Act is lifted for exchange of information purposes. The Attorney General has issued a legal opinion underlining that the SRC is empowered, under the RAA, to request bank information from financial institutions.

263. For the period under review, the SRC requested bank information in 172 instances. In all instances but one, the information requested was provided. In the remaining case, the bank concerned was reminded with a letter quoting the applicable sanctions and this information was eventually furnished. For EOI purposes, bank information was requested in one case and provided to the requesting jurisdiction.

Legal professional privilege

264. Section 6 of the Seychelles' Legal Practitioners Act provides that a legal practitioner is entitled to assist and advise his(her) clients and to represent his(her) clients in Court. The Seychelles legal framework further provides that legal practitioners are covered by professional secrecy obligations in their relationships with their clients. In particular, section 9(1)f of the Legal Practitioners Act provides that a legal practitioner shall not directly or indirectly through another person use any information received by him or come to his knowledge in confidence in his capacity as a legal practitioner.

265. Nevertheless, DTCs and TIEAs signed by the Seychelles contain wording consistent with the international standard and require that information held by a legal practitioner is to be disclosed unless such information is produced for the purpose of seeking or providing legal advice or produced for the purposes of or use in existing or contemplated legal proceedings. Further, the access to information powers of the Seychelles Revenue Commission can be used irrespective of any confidentiality provisions contained in any other piece of legislation. The simultaneous application of the Seychelles' EOI mechanisms and the RAA ensures that information held by legal practitioners will be accessed by the Seychelles Revenue Authorities in compliance with the standard.

266. No other legal professional privilege does exist in the Seychelles.

267. The SRC does not have any experience in relation to requesting information from legal practitioners either for domestic or EOI purposes. The EOI manual recently drafted mentions that the provision of communications between a client and an attorney, solicitor or other admitted legal representatives may be declined where such communications are produced for the purposes of seeking or providing legal advice, or produced for the purposes of use in existing or contemplated legal proceedings. The manual also specifies that no privilege should be attached to documents or records delivered to an attorney, or other legal representative in an attempt to protect such documents or records from disclosure.

Other confidentiality provisions

268. Various confidentiality provisions were contained in the Seychelles’ legal and regulatory framework preventing the Seychelles’ competent authorities for EOI to access ownership information and accounting records for EOI purposes:

- only IBC’s members are allowed to inspect IBCs books and records kept at the registered office (IBC Act s. 66);
- only partners of limited partnerships can inspect the register of members kept by the general partner at the limited partnership’s registered office in the Seychelles (Limited Partnerships Act s. 11(2));
- trustees are prevented of disclosing any information acquired in their duties, except under specific order of a court (International Trusts Act s. 8(3)); and
- the Business Tax Act did not apply to foundations, meaning that it was not possible to access any information maintained by these entities for EOI purposes.

269. Since 2011, the section 34 of the RAA makes it clear that powers to collect information can be used by the Seychelles Revenue Commission notwithstanding “any contractual duty of confidentiality” or “anything stated to the contrary in any other Act”. In addition, the amendment to this Act passed by the Seychelles in December 2011 clarifies that these domestic powers to access information can also be used to answer incoming requests received from treaty partners. Consequently, the confidentiality provisions contained in the Seychelles’ IBC Act, Limited Partnerships Act and International Trusts Act can be waived when the information sought is in relation with an EOI matter.

270. In practice, the SRC has confirmed that it can request information from registered agents, irrespective of confidentiality provisions contained in other Acts. So far, the access to information powers granted by the RAA has not been tested in instances where information requested is covered by secrecy provisions. The AML Act contains similar provisions requiring information to be provided to the FIU even in instances where this information is covered by confidentiality provisions. The FIU reported that for AML/CFT purposes, it was, in such instances, in a position to collect this information.

Conclusion

271. For the period under review, the SRC was in a position to request information from third parties, be it ownership or accounting information and to gather it for domestic purposes. Bank information was also successfully

collected in all instances for domestic purposes. Powers granted by the RAA to the SRC to collect information are therefore adequate. The Seychelles' EOI experience is nevertheless limited and although a comprehensive answer was provided in response to the only EOI request received so far, it is recommended that the Seychelles continue to monitor access to information for EOI purposes to make sure that comprehensive answers are provided to partner jurisdictions in all instances.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Phase 2 rating	
Compliant	
Factors underlying Recommendations	Recommendations
The access to information powers granted by the Revenue Administration Act have only been tested in one instance for EOI purposes in the period under review.	It is recommended that Seychelles continue to monitor access to information for EOI purposes to make sure that it is effective in all cases.

B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

Not unduly prevent or delay exchange of information (ToR B.2.1)

272. Under the RAA, there is no prior notification procedure to inform the taxpayer that he will be required to produce accounts and records or that a third party will be required to provide such information. All types of information can be collected by way of notice without informing first the person concerned that a request for information has been received. As previously described, the notice only contains the elements that are necessary to collect information (basically information requested and periods concerned) and will not disclose any confidential material provided by the treaty partner. There is also no need to notify the person concerned once the information is transmitted to the requesting party.

273. While taxpayers have rights of appeal under the RAA, none of these may be invoked in order to halt the exchange of information in accordance

with an international agreement. The SRC clarified that the only situations where a taxpayer can appeal a decision taken is when it relates to an assessment decision. As far as EOI is concerned, the SRC will use its information gathering measures and their use cannot be appealed. Rights and safeguards can therefore not be used to delay the provision of information to the SRC and the treaty partner.

274. Under the Anti-Money Laundering Act, 2006 (as amended), no notification is required to customers when government authorities request information from obliged entities including where the information is requested to respond to an international request for information for tax purposes.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

C. Exchanging information

Overview

275. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In the Seychelles, the legal authority to exchange information derives from double tax conventions. This section of the report examines whether the Seychelles has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

276. The Seychelles has an EOI network that covers 40 jurisdictions, 28 covered by a DTC, 9 by a TIEA and three by a multilateral instrument. Since 2012, the Seychelles has concluded DTCs with Bermuda, Ethiopia, Isle of Man, Luxembourg, Malawi, San Marino and Swaziland. Three other countries (Democratic Republic of Congo, Mozambique and Tanzania) are covered by the Southern African Development Community's Agreement on Assistance in Tax Matters (SADCA). The Seychelles have ratified all its DTCs and TIEAs except two recently signed though ratification has still to be completed by some of its partners.

277. Amendments made by the Seychelles to its domestic legislation eliminate any previous restrictions in relation to access to information and bring its 17 DTCs signed before July 2010 to the standard. For EOI agreements signed since 2010, the DTC with Lesotho contains restrictions on access to bank information and three new DTCs containing restrictions were signed over the last year with Bermuda, Malawi and San Marino. The DTC with Bermuda has been brought into line with the standard. As a result, EOI to the standard now takes place under all the Seychelles' EOI agreements, except those with these three countries. Consequently, element C.1 of the report is assessed to be "in place but certain aspects of the legal implementation of the element need improvement" and a recommendation is made asking the Seychelles to continue to work on updating the treaties signed with Lesotho, Malawi and San Marino.

278. During the course of the supplementary review, one of the Seychelles’ partners advised that it proposed to the Seychelles to sign a TIEA and that the Seychelles answered proposing a DTC instead. The Seychelles advised that it remains fully committed to the international standard and to the conclusion of TIEAs that it is increasingly willing to enter into TIEAs (9 have already been signed), but that in this specific case it thinks appropriate to conclude a DTC considering the high number of Seychellois living in that country as well as economic ties. During the course of the Phase 2 review, two other jurisdictions mentioned that they had difficulty in establishing TIEA negotiations with the Seychelles. The factor underlying the recommendation made under C.2 has been amended to better reflect this new situation and this element is now assessed to be “in place but certain aspects of the legal implementation of the element need improvements”.

279. As part of its commitment to the international standard, the Seychelles has implemented procedures for handling incoming EOI requests. Procedures and resources allocated to EOI are adequate to handle the current volume and to face increasing volume in the future. Confidentiality of information and material received is ensured through general confidentiality processes in place at the SRC and other measures specifically dedicated to EOI matters. Nevertheless, since the Seychelles’ experience in EOI is limited (only one request has been received so far), it is recommended that its authorities continue monitoring its processes and resources to ensure that complete answers are provided to its partners in a timely manner.

C.1. Exchange-of-information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

280. The Seychelles has an EOI network that covers 40 jurisdictions, 28 covered by a DTC, 9 by a TIEA and three by a multilateral instrument. Since 2012, the Seychelles has concluded DTCs with Bermuda, Ethiopia, Isle of Man, Luxembourg, Malawi, San Marino and Swaziland. Three other countries (Democratic Republic of Congo, Mozambique and Tanzania) are covered by the Southern African Development Community’s Agreement on Assistance in Tax Matters.

Foreseeably relevant standard (ToR C.1.1)

281. The international standard for exchange of information envisages information exchange to the widest possible extent. Nevertheless it does not allow “fishing expeditions,” i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of

“foreseeable relevance” which is included in paragraph 1 of Article 26 of the OECD Model Taxation Convention as below:

The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out of the provisions this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation there under is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

282. At the time of the Phase 1 review two treaties – with Belgium and Monaco – and one protocol – with Malaysia – signed by the Republic of the Seychelles referred to ‘exchange of information where it is foreseeably relevant’.

283. All the other treaties made reference to “exchange of information as if necessary” or “as is necessary relevant” (Barbados). As such, these agreements also met the “foreseeably relevant” standard, as the term “necessary” is recognised in the commentary to Article 26 (Exchange of Information) of the *OECD Model Tax Convention* to allow for the same scope of exchange as does the term foreseeably relevant”.

284. All 9 TIEAs signed by the Seychelles contain a provision which mirrors Article 1 of the OECD Model TIEA and which is in line with the international standard. For the most recent agreements, the protocols with Mauritius and South Africa and DTCs with Bahrain, Isle of Man, Luxembourg, Malawi, San Marino, Sri Lanka, and Swaziland refer to “such information as is foreseeably relevant”. The DTCs with Ethiopia, Kuwait, Lesotho, and Zambia refer to “such information as is necessary” which is considered in the Commentary to Article 26 of the *OECD Model Tax Convention* as having the same scope of exchange as does the term “foreseeably relevant”.

285. However, the treaty with Bermuda contains an annexed “Mode of Application” which provides, amongst other things that “the identity and, to the extent known, address of any person which the applicant State believes to be in possession of the requested information” be provided in order to demonstrate the foreseeable relevance of the information to the request. The requirement for the requesting jurisdiction to provide information in relation to the identity of the person believed to be in possession of the information in all cases, and not only to the extent known, is different from the wording in Article 5(5) of the Model TIEA. Subparagraph € of Article 5(5) only requires providing “to the extent known, the name and address of any person believed to be in the possession of the requested information”. Since then,

the Seychelles and Bermuda have amended the Mode of Application in line with the standard. Paragraph 2(f) of the Mode of Application now mirrors subparagraph € of Article 5(5) of the Model TIEA.

286. The DTCs with Malawi and San Marino include an additional protocol which provides for additional requirements to justify that an incoming request is foreseeably relevant:

- the identity of the person under examination or investigation and, if banking records are sought by the applicant State, the identity of the specific bank from which information is sought; and in every case a statement of all supporting evidences and other circumstantial proofs which the request is based upon;
- the name and to the extent known, address of any person which the requesting State believes to be in possession of the request information.

The Seychelles are in contact with these partners with a view to deleting these additional requirements.

287. The Protocol amending the DTC with Lesotho, which was signed on the same date as the DTC, contains in paragraph 6 a provision which provides that bank records will be exchanged only if the request identifies both a specific taxpayer and a specific bank. This provision is not in line with Article 26 of the OECD Model Tax Convention. However, the provisions contained in the Protocol can only replace Article 26 of the DTC upon acceptance by the Lesotho authorities and acknowledgement of such acceptance by the Seychelles authorities. Seychelles has confirmed that to date, there has been no notification of acceptance by the Lesotho authorities of the Protocol and therefore the provisions contained in the Protocol are not in effect. Nonetheless, the Seychelles contacted Lesotho seeking to delete this requirement in the Protocol in April 2012. No response has been received.

288. The requirement to provide the name of the person in possession of information in the requesting State is an additional requirement beyond those permitted under article 26 of the OECD Model Tax Convention. The requirement to provide the identity of the specific bank holding the information along with additional evidence goes beyond the requirements permitted by the standard of foreseeable relevance contained the international standard. It is recommended that the wording of the “Mode of Application” be amended in the treaties with Malawi and San Marino as well as the Protocol to the DTC with Lesotho to ensure that there are no restrictions on EOI to the standard.

In respect of all persons (ToR C.1.2)

289. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

290. In all conventions signed by the Republic of the Seychelles, the exchange of information provision is written in very general terms. All of these provisions provide for exchange of information in respect of all persons (i.e. exchange of information is not restricted by article 1 of the convention): Barbados, Belgium (not in force), Botswana, China, Cyprus¹⁶, Indonesia, Malaysia, Mauritius, Monaco (awaiting ratification), Oman, Qatar, South Africa, Thailand, UAE, Vietnam, and Zimbabwe.

291. All of the Seychelles' latest DTCs specifically provide that exchange of information is not restricted by Article 1 of the convention. All TIEAs and Protocols signed by the Seychelles provide exchange of information in respect of all persons.

Obligation to exchange all types of information (ToR C.1.3)

292. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Convention and the Model Agreement on Exchange of Information, which are the authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information

16. 1. Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

2. Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

293. All TIEAs signed by the Seychelles contain wording akin to paragraph 5 of article 26 of the *OECD Model Tax Convention*. The Protocols with Mauritius and South Africa as well as the DTCs with Bahrain, Belgium, Bermuda, Ethiopia, Isle of Man, Lesotho, Luxembourg, Malawi, Monaco, San Marino, and Swaziland contain such wording. The DTC with Lesotho contains an additional protocol which provides that “banking records will be exchanged upon request. If the request does not identify both a specific taxpayer and a specific bank or financial institution, the competent authority of the requested State may decline to obtain any information that it does not already possess”. The DTCs with Malawi and San Marino, signed in 2012, also contain additional restrictions to the exchange of bank records. They require the requesting State to provide the name of the bank concerned as well as supporting evidence. These additional requirements could frustrate effective exchange of information. Element C.1 is therefore assessed to be “in place but certain aspects of the legal implementation of the element need improvement” and the Seychelles should continue to work with its partners to bring these treaties in line with the international standard.

294. While the DTCs with Kuwait, Sri Lanka, and Zambia do not expressly provide for exchange of banking information, nothing prevents the Seychelles’ authorities from accessing bank information for EOI purposes and exchanging it with counterparts on request. Consequently, all of the Seychelles’ EOI mechanisms whether signed before or after 2010, except those with Malawi, Lesotho and San Marino, allow for exchange of bank information in accordance with the international standard. During the period under review, the SRC had to collect bank information to answer one incoming request. These powers were also used in 172 cases for domestic purposes. The FIU also reported that during the period under review it asked banks to provide bank information in a number of instances and that information was provided without any difficulty.

295. Bank secrecy may nevertheless exist in the domestic laws of some of the Seychelles’ treaty partners¹⁷ and the Seychelles should monitor access

17. Out of Seychelles’ treaty partners, 22 have been reviewed so far (Bahrain, Barbados, Belgium, Bermuda, Botswana, China, Cyprus, Denmark, Finland, Guernsey, Iceland, Indonesia, Isle of Man, Luxembourg, Malaysia, Mauritius, Monaco, the Netherlands, Norway, Qatar, San Marino, South Africa, Sweden and UAE) and 2 were found to have access powers limited by bank secrecy, 1 is a Global Forum members but has not been reviewed (Lesotho) and 12 of them are not Global Forum members (Ethiopia, Faroe Islands, Greenland,

to banking information in these cases and renegotiate the treaties that do not meet the international standard in this respect.

Absence of domestic tax interest (ToR C.1.4)

296. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party

297. The Seychelles’ DTCs with Bahrain, Barbados, Belgium, Bermuda, Ethiopia, Isle of Man, Lesotho, Luxembourg, Malawi, Monaco, San Marino, Sri Lanka, and Swaziland and the protocol amending the treaty with Malaysia Mauritius and South Africa include wording corresponding to paragraph 26(4) of the *OECD Model Tax Convention*. All TIEAs recently signed by the Seychelles contain wording akin to article 26(4) of the *OECD Model Tax Convention*.

298. As previously described under Part B.1.3 of this report, following the adoption of the Revenue Administration (Amendment) Act 2011, the Seychelles’ competent authority has clear powers to access information whether the information requested is of interest for domestic tax purposes or not. This is the case whether the EOI mechanism concluded by the Seychelles includes wording akin to article 26(4) of the *OECD Model Tax Convention* or not. Consequently, all treaties signed by the Seychelles comply with the international standard in this respect except if otherwise provided by the legislation of the treaty partner. Over the period under review, the SRC has been able to collect information for EOI purposes absent a domestic tax interest.

299. For any treaties that are not to the standard because of a domestic tax requirement that exists in the Seychelles’ treaty partners, it is recommended that the Seychelles continue its efforts to update them.

Absence of dual criminality principles (ToR C.1.5)

300. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of

Kuwait, Malawi, Oman, Sri Lanka, Swaziland, Thailand, Vietnam, Zambia, and Zimbabwe).

information should not be constrained by the application of the dual criminality principle.

301. All of the treaties signed by the Seychelles since 2010 comply with the international standard as they do not restrict exchange of information by application of a dual criminality requirement. In practice, Seychelles received one request for information, which did not specify whether it was related to a criminal tax investigation. The dual criminality principle was not applied and the requested information was provided. Accordingly, no issue in this respect was reported by peers.

Exchange of information in both civil and criminal tax matters
(ToR C.1.6)

302. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as “civil tax matters”).

303. There is no distinction drawn in all the Seychelles’ DTCs between civil and criminal matters as far as taxation is concerned. All DTCs are entitled “Agreement for avoidance of double taxation and prevention of fiscal evasion with [name of counterparty]”. In addition, the first paragraph of the exchange of information article with China, Cyprus, Indonesia, South Africa, specifically mentions that the information exchange will occur “for the prevention of evasion or avoidance of, or fraud in relation to, such taxes”.

304. The relevant exchange of information article in all double taxation conventions and TIEAs signed by the Seychelles may be used to obtain information to look into both civil and criminal tax matters. Seychelles does not require information from the requesting competent authority as to whether the requested information is sought for criminal or civil tax purposes as there is no difference in administrative procedures or information gathering powers in respect of EOI requests related to civil or criminal tax matters. No peer input indicated any issue in this respect.

Provide information in specific form requested (ToR C.1.7)

305. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form

is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

306. Even though there are no specific provisions in DTCs signed by the Seychelles mentioning that information must be provided in the specific form requested, section 34(3) of the *Revenue Administration Act, 2009* foresees the possibility for the Revenue Commissioner to require the information or evidence to be given on oath, verbally or in writing.

307. Pursuant to the TIEAs and DTCs signed by the Seychelles, information can be provided in the specific form requested, to the extent allowable under the requested jurisdiction's domestic laws.

In force (ToR C.1.8)

308. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. Where exchange of information agreements have been signed, the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

309. From the latest information provided by the Seychelles, it appears that all its TIEAs have been ratified. All its DTCs have also been ratified but those signed with the Isle of Man and Swaziland. For the 11 others (Belgium, Bermuda, Ethiopia, Kuwait, Lesotho, Luxembourg, Malawi, San Marino, Sri Lanka, Zambia, and Zimbabwe), ratification has still not been completed by the treaty partner.

310. With regard to the ratification of treaties, the ratification process is handled by the Ministry of Finance, Trade and Investment. Once a treaty is initialled, the Ministry prepares a memorandum for the Cabinet for the signing of the treaty. As the Cabinet has usually already agreed the outcomes of the negotiations, there are no further discussions at this stage. Once the Cabinet has approved the treaty, the Ministry of Foreign Affairs is advised and the Minister Delegates authority to sign either to an Ambassador or another Minister. After being signed, the treaty is sent to the Attorney General's Office which will take care of formatting the agreement for gazetting. Tax treaties and EOI arrangements do not have to be ratified by Parliament and can be directly gazetted.

311. The Seychelles' authorities advised that it can take about one month from initialling to signature and no more than one month between signature and ratification. This is the result of the lack of need to translate agreements (the Seychelles' authorities are empowered to negotiate in English and French

and treaties can be ratified in both these languages) and ratification without the sanction of the National Assembly.

312. All treaties signed by the Seychelles have been swiftly ratified though ratification has been delayed by the partner in a number of instances.

In effect (ToR C.1.9)

313. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement.

314. With the amendments made in 2011 to its RAA and the Seychelles Revenue Commission Act, the Seychelles has lifted its domestic tax interest requirement and has therefore fully given effect to its EOI mechanisms. In practice, the Seychelles were able to respond to the incoming request received. They have also created a framework under which answers can be provided

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place but certain aspects of the legal implementation of the element need improvement.	
Factors underlying Recommendations	Recommendations
Three of the treaties signed by the Seychelles since 2010 contain wording inconsistent with the international standard.	The Seychelles should renegotiate the three recently signed treaties that are not consistent with the international standard.
Phase 2 rating	
Partially Compliant	

C.2. Exchange-of-information mechanisms with all relevant partners

The jurisdictions’ network of information exchange mechanisms should cover all relevant partners.

315. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic

significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

316. For the purpose of negotiating tax treaties and EOI arrangements, a dedicated committee has been established in the Seychelles, comprising representatives from the Ministry of Finance, Trade and Investment the SIBA, the SRC and the Ministry of Foreign Affairs. The Ministry of Finance is in charge of leading the treaty negotiations with the support from one delegate of each of these departments.

317. In 2010 the Seychelles' treaty network¹⁸ covered 17 countries, with 13 agreements in force (see Annex 2).

318. In addition to its 17 EOI mechanisms in place in 2010, the Seychelles signed between 2010 and 2012 4 new DTCs with Bahrain, Lesotho, Sri Lanka and Zambia. TIEAs were also signed with Guernsey, the Netherlands and the 7 Nordic jurisdictions (Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden). More recently, the Seychelles has concluded DTCs with Bermuda, Ethiopia, Isle of Man, Luxembourg, Malawi, San Marino and Swaziland. Since August 2012, the Seychelles is also party to the Agreement on Assistance in Tax Matters signed by some of the countries belonging to the Southern African Development Community¹⁹ and extending its network of EOI relationships to the Democratic Republic of Congo, Mozambique and Tanzania. As a result the Seychelles' network of EOI agreements to the standard now covers 37 jurisdictions.

319. The Seychelles also advised that treaty negotiations are taking place with Egypt, Ghana, Guinea, Jamaica, Kenya, Morocco, Mozambique, Namibia, Nigeria, Pakistan, Portugal, Russia, Senegal, Singapore, Tunisia and Uganda. The Seychelles is currently seeking to expand its network of DTCs with African countries, following calls by the two regional organisations to which the Seychelles belongs with a view to developing economic relationships. To this end, a letter was sent to 54 African countries, proposing to conclude a tax convention. The Seychelles is also exploring the possibility of developing its EOI network toward Eastern Europe, Latin America and South-East Asia.

18. All treaties are considered in this paragraph whether they are to the standard or not.

19. This agreement was signed on 18 August 2012 by the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Swaziland, Tanzania and Zambia.

320. In addition, the Seychelles proposed to all its DTCs partners to renegotiate the existing treaties and replace the current EOI provisions by provisions incorporating a wording consistent with the latest version of article 26 of the *OECD Model Tax Convention*, including paragraphs 4 and 5. As a practice, the Seychelles now only negotiates EOI mechanisms incorporating such wording.

321. Comments were sought from Global Forum members in the course of the Phase 1 and supplementary reviews and one jurisdiction advised that a TIEA was proposed to the Seychelles and that the Seychelles responded to this proposal by proposing a DTC instead.

322. The Seychelles indicated that there are strong ties between that jurisdiction and the Seychelles with more than 30 000 Seychellois and many Seychellois students living in that country, as well as one company from that country involved in the exploration of natural resources (hydro carbon) in the Seychelles. Consequently, the Seychelles considers it appropriate to seek to conclude a DTC, in the interest of strengthening bilateral trade and investment links as well as to avoid or reduce the imposition of double taxation. The Seychelles has reported that a further letter was sent to this partner, without any answer.

323. During the course of the Phase 2 review, another of the Seychelles' partners also reported that it proposed several times to the Seychelles to conclude a TIEA but that Seychelles has not acceded to this request so far. The Seychelles responded that it proposed to this partner to conclude a TIEA subject to the further conclusion of a DTC within one year after which the TIEA would be automatically terminated). This proposal was made on 5 April 2012 and it was rejected by the partner. Another partner also reported that its request for the conclusion of a TIEA was not accepted by the Seychelles. The Seychelles reported that it first proposed a DTC to this partner, a proposal that was accepted. Thereafter, and just before the first round of negotiations was to take place, this partner proposed a TIEA instead. The Seychelles stated that it does not oppose a TIEA in this case but that it is awaiting a reply from the partner to understand precisely why the initial agreement for the conclusion of a DTC has shifted to a counter proposal for a TIEA

324. Ultimately, the standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement.²⁰ The Seychelles has not in all instances successfully progressed in this area. It is recommended that the Seychelles conclude arrangements providing for EOI with its partners, regardless of their form.

20. See footnote 24 of the Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information for Tax Purposes.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying Recommendations	Recommendations
The Seychelles has been approached by three jurisdictions to negotiate a TIEA and has not successfully progressed those negotiations.	The Seychelles should enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.
Phase 2 rating	
Partially Compliant	

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

Information received: disclosure, use, and safeguards (ToR C.3.1)

325. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments countries with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

326. Treaties signed by the Seychelles contain provisions aimed at keeping confidential all information received from a treaty partner. Moreover, they specify that this information cannot be used for other purposes than those expressly mentioned in the incoming request.

327. In addition, section 11 of the Seychelles Revenue Commission Act, 2009 stipulates that “a person being officer shall not either directly or indirectly, except in the performance of any duty as an officer, and either while the person is or after the person ceases to be an officer, make a record of,

or divulge or communicate to any other person any such information so acquired by the person”.

328. Paragraph 2 of section 12 of the same Act stipulates that any revenue officer who reveals to any person any document or information which has come into the possession or knowledge of that person in the course of performing official duties, or permits other persons to have access to any document in the possession or custody of the Commissioner in that official capacity is guilty of an offence and on conviction is liable to a fine of not less than SR 10 000 (USD 800) and to imprisonment for not more than one month.

329. The SRC reported that to formalise this duty, a confidentiality statement is always included in the contract of new staff hired. With regard to access to confidential material, each member of staff has access rights determining which databases and which sections of these databases (s)he will have access to. All databases are password protected, the log in details determining whether the user can access or not. Access to the premises of the SRC is also restricted and fingerprint identification is required to enter these premises.

330. All incoming EOI requests are stored in a locked cabinet located in the Revenue Commissioner’s office. An EOI database has been created to handle and secure incoming EOI requests. This database can only be accessed by four persons: the Revenue Commissioner, its legal adviser, the Assistant Commission in charge of the Tax Division. Regular audits are conducted to assess whether some staff would have inappropriately accessed protected or confidential information. So far, no breaches have been experienced in the Seychelles.

331. Information needed to answer an EOI request will be collected as it would be for domestic purposes. Hence, the notice requesting information never contains information such as the name of the person concerned in the requesting jurisdiction or background information (unless essential to collecting the information) and includes only the applicable legal provisions and details of the information requested. These practices have been clearly specified in the EOI manual drafted by the SRC.

All other information exchanged (ToR C.3.2)

332. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

333. The rights and safeguards described in the previous section apply equally to information provided in a request, information transmitted in response to a request and any background documents to such requests.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

Exceptions to requirement to provide information (ToR C.4.1)

334. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney – client privilege is a feature of the legal systems of many countries.

335. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that, the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where attorney – client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

336. Each of the Seychelles’ exchange of information mechanisms ensure that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney client privilege or information the disclosure of which would be contrary to public policy.

337. No issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by any of the Seychelles' exchange of information partners.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days (ToR C.5.1)

338. In order for exchange of information to be effective it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international cooperation as cases in this area must be of sufficient importance to warrant making a request.

339. The Seychelles has so far received one request for information, in 2011. This request covered several items of information, including ownership, property and banking information. Information already held by the SRC (tax registration information, tax returns, type of income received, criminal offences) was collected in one day. Information from the Company Registrar (assets and shareholders of companies) was received within one month. Financial and bank statements were received within between one and three weeks. The Seychelles needed 5 months to exchange all the information. The Seychelles' competent authority reported that this delay was due to the fact that the country was newly involved in the process of exchanging information. Before processing the request, contacts had to be established to determine the extent to which responses should be provided. After further analysis, the request was properly handled and all information provided to the requesting party. As EOI is very recent for the Seychelles, its competent authority should continue to monitor its timelines to make sure that proper answers can be provided to all treaty partners in a timely manner.

Organisational process and resources (ToR C.5.2)

340. Administrative responsibility for revenue law is under the management of the Revenue Commissioner at the Seychelles Revenue Commission (SRC), an independent body responsible to the Minister of Finance which was established under the Seychelles Revenue Commission Act, 2009. The SRC is involved in the design of tax policies, assessing, collecting and accounting revenue. While the competent authority for the exchange of information in the Seychelles is the Minister of Finance, Trade and Investment requests for exchange of information are administratively dealt with by the Seychelles Revenue Commission. The Revenue Commissioner was designated as competent authority by the Minister of Finance, Trade and Investment.

341. When an incoming request is received by the Revenue Commissioner, it is passed on to the legal adviser who will be in charge of reviewing this request and proposing whether it should be responded to or not. The legal advisor has been specifically trained to this end. An EOI manual detailing the different steps to respond to an incoming request has been drafted and disseminated within the Tax Division of the SRC.

342. When received, the incoming request is first registered by the legal advisor in the database that has been developed by the SRC to handle EOI. Some significant information must be recorded in this database: reference number (which is automatically allocated by the system), country of origin, date on which the request was received, name of the competent authority and legal basis. In cases where the legal basis is missing, the SRC cannot process the request and would not request additional information. All requests received in English or French can be processed. Requests received in other languages would be sent back to the requesting jurisdiction, asking for a translation.

343. Within seven days of receipt of the EOI request, an initial scanning is done by the legal advisor who will check whether the request should be processed or not. This initial scanning covers the applicable EOI arrangement (and whether it covers the person, taxes and tax periods that are listed in the request) and the content of the request (whether data provided are sufficient to identify the person subject to the request in the Seychelles). If the request is complete and signed by a competent authority, an acknowledgement will be provided to the treaty partner. Within five days of receipt the database will automatically indicate to the Revenue Commissioner that an acknowledgement of receipt must be provided to the treaty partner. Should the incoming request not be complete at that stage, the Revenue Commissioner would ask for clarifications. If the request is not valid because for instance there is no EOI arrangement in force, it is immediately rejected.

344. Once it has been concluded that the request can be processed, it is also analysed to determine whether the information requested is foreseeably relevant, detailed enough to not be considered a fishing expedition and to make sure that the requesting party has used all domestic means available to gather the requested information. The request will be examined in light of the commentary to article 26 of the *OECD model tax convention*. Once this analysis has been performed, a memo is provided by the legal advisor to the Revenue Commissioner for authorisation of further steps. According to the Seychelles authorities, there is no undue delay as the legal advisor is in close working contact with the Revenue Commissioner. If the request is not considered as foreseeably relevant a request for clarification will be sent to the treaty partner. If it is concluded that the request should be processed, it is sent to the Assistant Commissioner responsible for the Tax Division. This division of the SRC will then be in charge of collecting the information under the conditions previously described in section B.1 of this report. If the information is available internally, the person nominated by the Assistant Commissioner for taxes is responsible for gathering the information and providing it. If the information is held by a third party, a notice requesting the information needed will be sent out, under the signature of the Revenue Commissioner.

345. To monitor this system, the database used for EOI automatically generates reminders so that reminders can be sent to the Tax Division and regular updates to the requesting party. Once the information has been collected and received from the Tax Division, it is checked again to ensure its accuracy, all documents are stamped and then provided to the treaty partner.

Conclusion

346. Considering the limited number of requests received from treaty partners, resources currently allocated to EOI are adequate. The SRC is expected to hire a new legal adviser which would allow more resources to analyse incoming requests in the event that volumes increase in the future. With regard to the Tax Division, which is in charge of collecting information in practice, EOI represents only a very minor part of its functions and this division is sufficiently staffed to face an increasing volume of incoming requests in the future. As mentioned above, the Seychelles' experience in handling incoming request is very limited. It is therefore recommended that the Seychelles continue to monitor its processes and resources in particular taking into account of any significant changes to the volume of incoming EOI requests, to ensure that both the processes and level of resources are adequate for effective EOI in practice.

Absence of unreasonable, disproportionate, or unduly restrictive conditions on exchange of information (ToR C.5.3)

347. There are no provisions in the Seychelles’ laws or in its treaties which apply conditions to the exchange of information above those in accordance with Article 26 of the OECD *Model Tax Convention*. There is no evidence of unreasonable, disproportionate, or unduly restrictive conditions on exchange of information in practice.

Determination and factors underlying recommendations

Phase 1 Determination	
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.	
Phase 2 rating	
Largely Compliant	
Factors underlying Recommendations	Recommendations
The Seychelles has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. For the period under review, the Seychelles received only one request for information. Consequently, the organisational processes have not been sufficiently tested in practice.	The Seychelles should monitor the organisational processes of the competent authority, as well as the level of resources committed to EOI, taking into account any significant changes in the volume of requests, to ensure that both the processes and level of resources are adequate for effective EOI in practice.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Non-Compliant	There are currently no effective sanctions in the event that ownership information in relation to IBCs is not available.	The Seychelles should have effective enforcement provisions to ensure that up-to-date ownership information in relation to IBCs is available to its authorities in all instances.
	When a copy of the share register is not kept at the office of the CSP but at another place in the Seychelles, there is no monitoring system in place to make sure that ownership information is available.	The Seychelles should monitor the availability of ownership information irrespective of the place where such records are kept.
	Although legal requirements have been introduced for the reporting of ownership information in relation to bearer shares, in practice there are situations where transfers of bearer shares are not notified to the company's registered agent.	The Seychelles should ensure that information on the owners of bearer shares is available within the Seychelles in all cases.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Non-Compliant	No system of monitoring compliance with accounting record keeping requirements is in place, which may result in the legal obligation to keep accounting records not being enforced. In addition, a number of accounting record keeping obligations have only been implemented since 1 January 2013 and are therefore untested in practice for EOI purposes.	The Seychelles' authorities should make sure that reliable accounting records for all relevant entities are available at all times.
	There are no effective sanctions where IBCs do not keep accounting records and existing sanctions have never been applied in practice.	The Seychelles should put in place and exercise effective sanctions that ensure records for IBCs are available.
Banking information should be available for all account holders. <i>(ToR A.3)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant	The access to information powers granted by the Revenue Administration Act have only been tested in one instance for EOI purposes in the period under review.	It is recommended that Seychelles continue to monitor access to information for EOI purposes to make sure that it is effective in all cases.

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Information exchange mechanisms should provide for effective exchange of information. <i>(ToR C.1)</i>		
Phase 1 determination: The element is in place but certain aspects of the legal implementation of the element need improvement.	Three of the treaties signed by the Seychelles since 2010 contain wording inconsistent with the international standard.	The Seychelles should renegotiate the three recently signed treaties that are not consistent with the international standard.
Phase 2 rating: Partially Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>		
Phase 1 determination: The element is in place but certain aspects of the legal implementation of the element need improvement.	The Seychelles has been approached by three jurisdictions to negotiate a TIEA and has not so far successfully progressed those negotiations.	The Seychelles should enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.
Phase 2 rating: Partially Compliant		
The information exchange mechanisms of jurisdictions should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
Information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
Phase 1 determination: This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		
Phase 2 rating: Largely Compliant	The Seychelles has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. For the period under review, the Seychelles received only one request for information. Consequently, the organisational processes have not been sufficiently tested in practice.	The Seychelles should monitor the organisational processes of the competent authority, as well as the level of resources committed to EOI, taking into account any significant changes in the volume of requests, to ensure that both the processes and level of resources are adequate for effective EOI in practice.

Annex 1: Jurisdiction’s Response to the Report²¹

Seychelles would like to express its appreciation for the work done by the assessment team in evaluating Seychelles’ legal and regulatory framework as well as the implementation of the standards in practice.

Seychelles would like to reiterate its full commitment to the international standards of transparency and exchange of information for tax purposes and express its support to the peer review process and work of the Global Forum on Transparency and Exchange of Information for Tax Purposes. Seychelles’ commitment has been demonstrated in a series of legislative amendments following the Phase 1 review which resulted in all legal elements being in place. Seychelles has also devoted appropriate resources to put in place procedures that allow information to be exchanged within a reasonable timeframe.

However, despite all efforts taken in implementing the international standard the Phase 2 review resulted in number of recommendations.

Seychelles is ready to address the findings of the report and has already taken steps to do that.

Elements A1 and A2

- Regarding the recommendation on bearer shares, we would like to clarify that since 2009 Seychelles has effectively had no bearer shares, following the introduction of the registration mechanism for bearer shares. Nonetheless in order to avoid any present or future misperception, Seychelles will follow-up with a proposed amendment to the relevant laws to abolish bearer shares.
- With regards to the recommendation in respect of the monitoring of IBC share registers kept outside the registered office in Seychelles, we would like to clarify that in practice, at all times these registers are kept at the registered office. This has been confirmed through

21. This Annex presents the jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.

the compliance inspections conducted by both the SIBA and FIU. Nonetheless in order to avoid any present or future misperception, Seychelles' proposal is to follow-up with an amendment to the relevant legislation to require share registers to be kept solely at the registered office in Seychelles.

- The amendments to the legislation will come into force on 1 January 2014.
- In relation to the recommendation concerning application of effective sanctions and monitoring, Seychelles will actively engage and work closely with the Secretariat in order to identify and implement the best practice.

Element C1

- Seychelles has formally requested the three treaty partners to amend protocols to the three treaties that are not in line with the international standards. This will be finalised before the end of December 2013. Seychelles has also taken steps to prevent any future signing of EOI arrangements which are not in line with the standard.

Element C2

- On 9th September, the Ministry of Finance informed through a formal letter the Global Forum Secretariat of Seychelles' commitment to conclude TIEAs with any partners who wish to do so.
- On the 15 October, a letter was sent to the Secretary General of the OECD to request becoming a party to the multilateral Convention. Seychelles will sign the Convention at the GF in November and will ratify the Convention by June 2014.

Moreover Seychelles will request for a supplementary report as soon as possible to reflect the above mentioned changes and any additional changes that will be made.

Annex 2: List of All Exchange-of-Information Mechanisms in Force

	Jurisdiction	Type of agreement	Date signed	Date in force
1	Bahrain	DTC	24 Apr 2010	3 Feb 2012
2	Barbados	DTC	19 Oct 2007	28 Feb 2008
3	Belgium	DTC	27 Apr 2006	Ratified
4	Botswana	DTC	26 Aug 2004	22 Jun 2005
5	Bermuda	DTC	24 May 2012	
6	China	DTC	26 Aug 1999	17 Jan 2000
7	Cyprus	DTC	28 Jun 2006	02 Nov 2006
8	Denmark	TIEA	30 Mar 2011	14 May 2012
9	Democratic Republic of Congo	SADCA	12 Aug 2012	
10	Ethiopia	DTC	14 Jul 2012	Ratified
11	Faroese	TIEA	30 Mar 2011	14 May 2012
12	Finland	TIEA	30 Mar 2011	08 Nov 2012
13	Greenland	TIEA	30 Mar 2011	14 May 2012
14	Guernsey	TIEA	30 Mar 2011	22 Jul 2012
15	Iceland	TIEA	30 Mar 2011	14 May 2012
16	Indonesia	DTC	27 Sep 1999	16 May 2000
17	Isle of Man	DTC	28 Mar 2013	
18	Kuwait	DTC	05 Feb 2008	Ratified
19	Lesotho	DTC	05 Sep 2011	Ratified
20	Luxembourg	DTC	06 Jun 2012	Ratified
21	Malawi	DTC	06 Sep 2012	Ratified
22	Malaysia	DTC DTC Protocol	03 Dec 2003 22 Dec 2009	10 Jul 2006

	Jurisdiction	Type of agreement	Date signed	Date in force
23	Mauritius	DTC DTC Protocol	11 Mar 2005 03 Mar 2011	22 Jun 2005
24	Monaco	DTC	04 Jan 2010	Ratified
25	Mozambique	SADCA	12 Aug 2012	
26	Netherlands	TIEA	04 Aug 2010	01 Sep 2012
27	Norway	TIEA	30 Mar 2011	14 May 2012
28	Oman	DTC	13 Sep 2003	20 Jan 2004
29	Qatar	DTC	01 Jul 2006	01 Jan 2008
30	San Marino	DTC	28 Sep 2012	Ratified
31	South Africa	DTC DTC Protocol	26 Aug 1998 05 Apr 2011	03 Jul 2002 15 May 2012
32	Sri Lanka	DTC	23 Sep 2011	Ratified
33	Swaziland	DTC	18 Oct 2012	
34	Sweden	TIEA	30 Mar 2011	14 May 2012
35	Tanzania	SADCA	12 Aug 2012	
36	Thailand	DTC	26 Apr 2001	14 Apr 2006
37	UAE	DTC	18 Sep 2006	23 Apr 2007
38	Vietnam	DTC	04 Oct 2005	07 Jul 2006
39	Zambia	DTC	07 Dec 2010	Ratified
40	Zimbabwe	DTC	06 Aug 2002	Ratified

Annex 3: List of All Laws, Regulations and Other Material Received

Constitution of Republic of the Seychelles, 1993

Tax system

Income and non monetary benefits tax Bill (draft), 2010

Revenue Administration Act, 2009

Revenue Administration (Amendment) Act 2011

Seychelles Revenue Commission (Amendment) Act 2011

Business tax act, 2009

Excise Tax Act, 2009

Social Security (contributions) (Amendment) Regulations, 2007

Goods and Service Tax Regulation, 2003

Laws governing companies

Commercial Code Act, 1976

Companies ordinance, 1972

Companies Ordinance (Amendment) Act 2011

Registration of Association Act, 1959

Registration of Business Names Act, 1991

Laws governing the offshore sector

International corporate service providers Act, 2003

International corporate service providers (amendment) Act, 2009

International Corporate Service Providers (Amendment) Act 2011

International Business Companies Act, 1994
International Business Companies (amendment) Act, 1995
International Business Companies (amendment) Act, 1997
International Business Companies (amendment) Act, 2000
International Business Companies (amendment) Act, 2009
International Business Companies (Amendment) Act 2011
IBC (Amendment of Schedule) Regulations 1996
IBC (Amendment of Schedule) Regulations 2005
IBC (Amendment of Schedule) Regulations 2007
Limited Partnerships Act, 2003
Limited Partnerships (Amendment) Act 2011
International Trusts Act, 1994
International Trusts (Amendment) Act 2011
Companies (special license) Act, 2003
Protected Cell Companies Act, 2003
Protected Cell Companies (amendment) Act, 2004
Foundations Act, 2009
Foundations (Amendment) Act 2011

Financial sector

Financial Institutions Act, 2004
Financial Institutions (Amendment) Act, 2011
Insurance Act, 2009

Anti-money laundering legislation

Anti-money laundering Act, 2006
Anti-money laundering (amendment) Act, 2008
Anti Money Laundering (Amendment) Act 2011

Administrative documentation

AML&CFT Procedures Guidelines, 2007

Application Form for CSL

Business Activity Statement

CSL Application Guidelines

“Due diligence” and “know your customer” declaration for CSL application

Guidance note for ICSP

Annex 4: People Interviewed During the On-site Visit

Ministry of Finance, Trade, and Investment

CEO of the Seychelles Investment Board & Head of Delegation for the Seychelles for negotiation team of Bilateral Agreements in relation to Tax Matters

Director General of Policy and Strategy & member of the negotiation team of Bilateral Agreements in relation to Tax Matters

Attorney General Office

Attorney General

Deputy Attorney General

Revenue Commission

Revenue Commissioner

Deputy Commissioner

Assistant Commissioner of Tax

Director of Taxpayer Services

Legal Adviser

Director IT

IT manager and analyst Programmer

Revenue Controller

Seychelles International Business Authority

Managing Director
Supervision and Market Surveillance Manager
Human Resources and Administration Manager
Policy, Research and Legal Manager
I.T Manager
Finance Manager
Fiduciary Manager
International Trade Zone Manager
Funds and Investment Services Manager

Registrar of Companies

Financial Intelligence Unit

Director
Deputy Director
Compliance Director
Senior Asset Agent

Central Bank of Seychelles

Senior Financial Services Analyst
Senior Financial Services Analyst
Second Deputy Governor

Industry Associations

Trustees
Banks
Financial Industry
Accountants

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: THE SEYCHELLES

This report contains a “Phase 2: Implementation of the Standard in Practice” review, as well as revised version of the “Phase 1: Legal and Regulatory Framework” review already released for this country.

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by 120 jurisdictions, which participate in the Global Forum on an equal footing. The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 *OECD Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the *OECD Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the *UN Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction’s legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to www.oecd.org/tax/transparency and www.eoi-tax.org.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264206199-en>

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